



IDEM Permit Guide

Stormwater Runoff Associated with Construction Activities

Who May Need a Permit

Any "project site owner" engaged in construction-related activities (meaning any manmade change of the land surface, including removing vegetative cover that exposes the underlying soil, excavating, filling, transporting, and grading) that disturb one (1) or more acres of land may be required to obtain a "Rule 5" storm water runoff permit under [327 IAC 15-5](#) (scroll down to page 10), from the IDEM Office of Water Quality.

A "project site owner" is any developer or other person(s) who has financial and operational control over construction activities and project plans at a construction site, including the ability to modify those plans.

The project site owner must submit a Notice of Intent to operate under Rule 5, and also must comply with all the procedures in, and requirements of, Rule 5. Compliance with Rule 5 general construction storm water permitting conditions will generally reduce pollutants – principally sediment as a result of soil erosion – in storm water discharges into surface waters of the state.

The purpose of a Rule 5 general permit is to establish requirements to protect State Water from adverse affects from stormwater discharges from construction activities.

IDEM does reserve the right to require an [individual NPDES \(National Pollutant Discharge Elimination System\) permit](#) rather than a Rule 5 general permit. If the agency determines the storm water run-off from a project could impair the water quality of the receiving stream, identified as a [outstanding state resource or exceptional use waters](#). Permittees will be notified by IDEM if they need to apply for an individual storm water discharge permit.

Why Is a Permit Now Also Required For Land Disturbances of Between One (1) and Five (5) Acres, When It Used To Be Required Only For Projects of Five (5) Acres Or More?

Until recently a Rule 5 permit was required for all construction activities that disturbed more that five (5) acres of soil. The five (5) acre threshold was consistent with Phase I of the federal storm water runoff rules promulgated (developed) by the U.S. EPA in November 1990. Under Phase II federal storm water runoff requirements, all soil disturbances of one (1) or more acres require a permit. All states with permitting authority were to have Phase II federal requirements in place by March 2003. Hence, the Indiana Water Pollution Control Board (WPCB) has promulgated new Rule 5 language that is **consistent with Phase II federal storm water requirements**. The new Phase II,

About general permits and "Notices of Intent"

Rule 5 ([327 IAC 15-5](#)) [PDF File] is a general permit, and as such it is not "issued" in the same manner as an individual NPDES permit would be issued. (To obtain an individual permit the applicant submits an application form, IDEM drafts site specific permit conditions and a public comment period is held to solicit proposed modifications to that draft, after which IDEM may revise its draft before issuing a finalized permit.) Rather, Rule 5 was "conditionally issued" to all future "project site owners" at the time that the rule was adopted by the Indiana [Water Pollution Control Board](#). The permit conditions within Rule 5 apply universally to all "project site owners" who are eligible to operate under the rule, and opt to do so.

As with any general NPDES permit, there is no 30-day public comment period because the public already had the opportunity to comment on the permit conditions in the Rule during the rulemaking process that lead up to the adoption of Rule 5. Hence, the "application" for a Rule 5 permit is called a **Notice of Intent, or NOI**, because the "applicant" or "project site owner" is essentially submitting a NOI letter *notifying* IDEM of his or her *intent* to operate their proposed construction project in a manner consistent with the "permit conditions" established by Rule 5. The "project site owner" also *notifies* the public – in a newspaper – of his or her *intent* to operate under Rule 5.

More info on the new requirements...

Visit the EPA's Web site for more information regarding [EPA's implementation of Phase I and Phase II storm water run-off requirements](#).

Rule 5 language took effect November 26, 2003. U.S. EPA was aware of the timeframe within which the WPCB was revising Rule 5, and it approved of the finalized rule.

In addition to the lower permitting threshold to 1 acre, there are numerous other [differences between the Phase I and Phase II permits](#) that are clarified below.

Construction sites subject to Phase II storm water regulation that are found to be operating without a valid Rule 5 permit (or individual NPDES permit, if required) in place will be subject to enforcement action and any subsequent fines.

Who Else Needs a Rule 5 Storm Water Run-off Control Permit:

- Project site owners disturbing the soil on one (1) or more acres within a larger common plan of development or sale [put a link to the anchored text box below that explains "larger common plan of development or sale"] that already has a storm water run-off permit may need their own, separate Rule 5 permit.
- Project site owners or farmers constructing agriculturally-related facilities (barns, livestock facilities, roads, agricultural waste lagoons, lakes, ponds, wetlands, or other farming infrastructure) that disturb one (1) or more acres of soil.
- "Strip developments" are considered a single project site, and any site that disturbs one (1) or more acres of soil must comply with the rule.
- Project site owners who currently hold a Rule 5 permit issued under the previous, Phase I Rule 5 (which was in effect until November 25, 2003) **if** the effective start date of that permit was more than five (5) years ago, **and** construction under that permit has not yet been completed, then renewal of their permit is required.

This has not been finalized by all concerned parties.

On the other hand, if you obtained a Rule 5 permit more than five (5) years ago and have completed that project, but never submitted a Notice of Termination (NOT) to IDEM confirming that you completed construction under your permit, you are required to submit a Notice of Termination. IDEM will be sending notifications to individual fail to submit required documents.

Who Does Not Need A Rule 5 Storm Water Run-off Control Permit

The following soil disturbing activities do not require a general, Rule 5, or individual NPDES construction-related storm water discharge permit:

- **Agricultural activities** (tilling, planting, cultivation, harvesting, pasture establishment or renovation, the installation and maintenance of agricultural drainage tiles, or the construction of agricultural conservation devices such as sediment basins, terraces, or grade stabilization structures) or forest harvesting activities.
- **Coal mining**, because storm water discharges from coal mine and coal mine reclamation areas are regulated by IDEM under a Rule 7 (327 IAC 15-7) permit, and by permits issued the Indiana Department of Natural Resources.
- **Sand, gravel, dimensional stone, or crushed stone quarries**, because those activities are regulated by IDEM under a Rule 12 (327 IAC 12-12) permit, and by permits issued by the Indiana Department of Natural Resources.
- **IDEM permitted municipal solid waste landfills** or landfills certified for closure.
- If the land disturbing activity results in the disturbance of five (5) acres or less that involves the construction of only one (1) single residential dwelling, and that construction is not part of any larger common plan of development or sale.
- Activities that disturb five (5) or fewer acres where IDEM has waived permit requirements after a demonstration by the project site owner, using analysis equivalent to a total maximum daily load (TMDL) study, that the land disturbing activities will not require controls to protect existing water quality.
- **Any land disturbing activity that results in the disturbance of less than one (1) acre. ***

* Nonetheless, IDEM may require a permit for soil disturbances of less than one (1) acre if it has concerns that the activity could significantly impair water quality. IDEM will notify the affected project site owner, if this is a concern.

Also please be aware that, if soil disturbance to less than one (1) acre occurs on a lot that is part of a larger common plan of development or sale (see sidebar) that already is permitted under Rule 5, that soil disturbing activity remains subject to Rule 5 permitting requirements. Hence the person or project site owner disturbing less than one (1) acre of soil within such a larger common site must comply with the existing Rule 5 permit and Construction Plan for that site. However, they do not need to submit a separate NOI letter for a separate Rule 5 permit.)

Some of the things a project site owner must do to comply with Rule 5 include (but are not limited to):

The Construction Plan

- An approved Construction Plan must be implemented before, during, and after construction activities occur.
- Before any land disturbing activities can take place, the project site owner must submit a Construction Plan to the county Soil and Water Conservation District (SWCD), except that Construction Plans for projects within the City of Indianapolis only (most of Marion County) are reviewed by City of Indianapolis Permit Division. (Plans for Speedway, Lawrence, Beech Grove, and Southport along with the City of Indianapolis Capital Improvement projects, and all road/highway plans, should still be submitted to the SWCD.)
- If the proposed site is in more than one SWCD jurisdiction, the project site owner may request a coordinated plan review from the Indiana Department of Natural Resources.
- The project site owner may not submit a Notice of Intent (NOI) to IDEM (to request to operate under a Rule 5 permit) without an accompanying notice (a construction plan review approval verification form, or "construction approval document") from the SWCD or Indianapolis Permit Division that the Construction Plan is sufficient. If the Construction Plan is deficient, and needs to be revised, the project site owner will be notified and will have twenty-one (21) days to submit a modified plan to the SWCDs and/or the Indianapolis Permit Division. If the project site owner has not received a construction plan review approval verification form, or "construction approval document," after twenty-eight (28) days, [they may go ahead and submit their NOI](#) to IDEM. However, if the NOI is submitted with a "notification of plan receipt" instead a construction plan review approval verification form, or "construction approval document", the project site owner still will be responsible for revising his or her Construction Plan, [if it is found deficient](#). (Note: The Indianapolis Permit Division may have a different time table for reviewing Construction Plans or plan modifications.)
- [Information required in the Construction Plan](#) includes (but is not limited to):
 - A description of the project
 - The street address and also the legal (surveyor's) location
 - Soil properties
 - Identification of any other state or federal water quality permits required for the project
 - Site layout with wetlands, water bodies, flood plains, soil maps, and contour maps
 - Grading plans
 - Drainage plans
 - A Storm Water Pollution Prevention Plan

Definition: Larger Common Plan of Development or Sale

A "larger common plan of development or sale" means a plan, undertaken by a single project site owner or a group of project site owners acting in concert, to offer lots for sale or lease; where such land is contiguous, or is known, designated, purchased or advertised as a common unit or by a common name, such land shall be presumed as being offered for sale or lease as part of a larger common plan. The term also includes phased or other construction activity by a single entity for its own use.

For example, if a developer buys a 20 acre lot and builds roads, installs pipes and runs electricity with the intention of constructing homes or other structures sometime in the near future, this would be considered a common plan of development or sale. If the land is parceled off or sold, and construction occurs on plots by separate, independent builders, this activity still would be subject to the storm water permitting requirement.

Although the project site owners are responsible for implementing the Rule 5 permit until all land disturbing activities are completed, the project site owner of a larger common plan of development or sale may be eligible for early release from the Rule 5 permit

Some of the things required by this plan are:

- Details regarding all temporary and permanent storm water quality measures
- Temporary and permanent stabilization plans and their sequence of implementation
- A construction sequence linking implementation activities to the various stages of construction
- A description of the self-monitoring plan and procedures
- A post-construction storm water pollution prevention plan
- If the Construction Plan is not found sufficient by the SWCD (Soil and Water Conservation District), the project site owner must work with the SWCD to modify the Construction Plan as necessary until it meets the requirements of the rule. If the project site owner begins land disturbing activities at the project site after being notified that the Construction Plan is deficient, it is a violation of the rules and is subject to enforcement action.

Submitting the NOI (Notice of Intent) Letter

- The NOI letter must be submitted to IDEM at least forty-eight (48) hours prior to any soil disturbing activity. (**see "Note" sidebar**)
- Some of the information to be included in the NOI letter are the following:
 - Name and location (street address) of the site
 - Project site owner's contact information (or their designated contact person)
 - Brief description of the construction project and its size (in acres)
 - Estimated dates to begin and end construction
 - Legal (surveyor's) description of the site location as well as the site location's [latitude and longitude](#)
 - A list of all MS4 (Municipal Separate Storm Sewer System) areas within which the project is located
 - Written certification by the project site owner that all storm water quality requirements will be addressed by the Construction Plan, and that the plan will be implemented as stated, and inspected by trained personnel. (Individuals trained and experienced in the principles of storm water quality, including erosion and sediment control as demonstrated by a state registration, professional certification, experience, or completion of coursework that enables the individual to make judgments regarding storm water control or treatment and monitoring.)
 - The name(s) of the receiving body, or bodies, of water
- The NOI letter must be accompanied by these three (3) things:
 - [Proof of publication in a newspaper of general circulation](#) of the project site owner's notification to the public
 - A \$100 [application fee](#), (That fee is forwarded by IDEM to the Indiana Department of Natural Resources, which shares it with the various county SWCDs that review the construction plans.
 - A construction plan review approval verification form, or "construction approval document" – a notification from the Soil and Water Conservation District (SWCD) or other reviewing agency that stating that the Construction Plan is sufficient. (**see "Note" sidebar**)

! Note !

These two requirements clearly suggest that an project site owner wishing to obtain a Rule 5 permit should plan to submit a Construction Plan to the SWCD at least thirty (30) days before any soil disturbance takes place.

However, if the allotted twenty-eight (28) day review period has passed since the SWCD or other reviewing agency received the Construction Plan, but the project site owner still has not received a "construction approval document", he or she may go ahead and submit a NOI letter to IDEM. In place of the "construction approval document" the NOI must instead be accompanied by a "notification of plan receipt" – a form from the SWCD or other reviewing agency stating that at least twenty-eight (28) days have passed since they first received a copy of the Construction Plan for review. If a "notification of plan receipt" has not been provided, the project site owner may request that the SWCD or other reviewing agency fax or mail it to them. That copy of the "notification of plan receipt" can then be submitted to IDEM with the NOI letter as a placeholder for the "construction approval document".

- The NOI letter must be signed by the responsible project site owner or their duly authorized representative and sent to:
 Rule 5 Storm Water Coordinator
 Indiana Department of Environmental Management
 Office of Water Quality, Urban Wet Weather Section
 100 North Senate Avenue
 P.O. Box 6016
 Indianapolis, IN 46206-6015

Additional Requirements After the NOI letter has been submitted to IDEM include (but are not limited to):

- If the NOI letter submitted to IDEM was accompanied by a "notification of plan receipt" instead a construction plan review approval verification form, or "construction approval document", and the project site owner subsequently is notified that the Construction Plan was deficient, then the SWCD or other reviewing agency may require that the plan be modified. If that is the case, the project site owner will have twenty-one (21) days to submit modifications to the plan.
- If the project site owner begins construction after receiving notification that the Construction Plan is deficient, it is a violation of Rule 5 subject to enforcement action. However, if construction already was begun before the project site owner received notification that the Construction Plan is deficient, he or she may continue construction, but must also re-submit a modified Construction Plan with fourteen (14) days
- If the NOI letter is determined by IDEM to be deficient, the project site owner must address the deficient items, and submit an amended NOI letter to IDEM.
- At the same time the NOI letter is submitted to IDEM, copies of the completed letter also must be sent by the project site owner to each SWCD in which the site (where the soil disturbing activity will occur) is located.
- If the proposed project lies within a designated MS4 (Municipal Separate Storm Sewer System) area and that MS4 has an approved construction site run-off control program in place, then the project site owner also must send a copy of the NOI letter to that MS4 program office.

Requirements Once Construction (And related soil disturbing activities) Have Begun

- The project site owner must notify IDEM (specifically, the [Rule 5 Coordinator](#)) and the SWCD (Soil and Water Conservation District) of the actual "start date" of the project within forty-eight (48) hours of the commencement of land disturbing activities. The "start date" marks the beginning of the five (5) year time clock during which the Rule 5 permit is valid.
- Runoff from the site must be treated by sediment and erosion control measures to minimize sedimentation.
- Trash and waste must not be carried off-site by wind or storm water run-off.
- Concrete truck washout areas must be clearly posted.
- There shall be a stabilized stone surface at all access points to the construction site that inhibits mud and potential sediments from being carried off-site by vehicle tires.
- Public and private roadways shall be kept clear of mud and soil tracked off-site by vehicle traffic or construction equipment. Any mud or soil that is tracked off-site must be gathered up and disposed, or redistributed on-site. Roadways may not be cleared of mud or soil by being flushed with water, such as spray from a water hose. In addition, dried mud and soil tracked onto a public roadway can, under some situations, be considered a violation of Indiana's [fugitive dust rules](#) enforced by the IDEM Office of Air Quality (See: [326 IAC 6-4-4](#) [PDF file], and scroll down to page 69 of 82 pages).
- The project site owner must post, near the project main entrance, or near the project field office:
 - A copy of the completed NOI letter to IDEM,
 - Contact information (address, phone, and e-mail) of the project site owner or designated contact person, and the
 - Location of the Construction Plan, if one is not stored on-site
- The project site owner must implement the Construction Plan, its associated [Storm Water Pollution Prevention Plan](#), and all other measures necessary to adequately prevent polluted storm

water run-off or sediment-laden run-off.

- It is the responsibility of the project site owner to make sure that all contractors, subcontractors, and other workers are aware of the Construction Plan and the Storm Water Pollution Prevention Plan (which is part of the Construction Plan), and that all the various workers at the site ensure proper implementation of the plan.
- Phasing of construction activities should be used where possible to minimize disturbing large areas of soil.
- All storm water quality measures must be designed and installed under the guidance of a trained individual. (Someone trained and experienced in the principles of storm water quality, including erosion and sediment control as demonstrated by a state registration, professional certification, experience, or completion of coursework that enables the individual to make judgments regarding storm water control or treatment and monitoring.)
- Collected run-off must either be diffused to the adjacent property or into a stable receiving channel, and may not cause erosion.
- Natural features such as sinkholes and wetlands shall be protected from pollutants and sediments.
- Unvegetated areas left inactive for more than fifteen (15) days must be temporarily or permanently stabilized.
- All storm water quality measures and erosion control fixtures shall be maintained in working order.
- A self-monitoring program must be implemented, and written evaluation reports maintained that, upon request, must be made available to inspecting authorities within forty-eight (48) hours.
- Proper storage, materials handling, and spill prevention and clean-up measures shall be implemented to minimize surface water or groundwater contamination.
- When all land disturbing activities have been completed, a perennial vegetative cover or equivalent permanent stabilization measure must be established over at least 70% of all unpaved areas; except that projects on agricultural land must be returned to their pre-construction agricultural use.

Requirements Once Construction (And all related land disturbing activity) Has Been Completed

- The project site owner must remove all temporary erosion control fixtures.
- The entire site must be permanently stabilized.
- The project site owner must submit a notice of termination (NOT) letter to IDEM.
- The owner of a site that has been divided into multiple building lots may submit a NOT letter even if all the sites have not yet been developed if:
 - the undeveloped area does not exceed five (5) total acres, with no contiguous areas of one (1) or more acres,
 - all permanent storm water measures are in place,
 - all common areas and infrastructure have been completed and stabilized, and
 - a map of all undeveloped lots and the names of their owners is submitted with the NOT letter. If such "early release" is approved by IDEM, the project site owner must notify each owner of undeveloped property and inform them of their storm water pollution prevention responsibilities.

What to Expect

Like any other permit-by-rule, when an applicant submits a Notice of Intent (NOI) for Rule 5, they are certifying that they will comply with all the terms and conditions specified in the rule.

As mentioned above, the project site owner should plan to submit their Construction Plan, which should include a completed Storm Water Pollution Prevention Plan, at least 30 days before they expect to begin construction. Since the Construction Plan could require modification, it would be best to submit it even earlier.

The Indiana Department of Natural Resources (DNR) Division of Soil Conservation staff, or their designated agents, conduct all compliance evaluations of project sites. They are authorized to inspect

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<http://www.in.gov/idem/guides/permit/water/stormwaterconstruction.html>

project sites at any reasonable time. The project site owner should be prepared to provide Construction Plans (including Storm Water Pollution Prevention Plans) and self-monitoring reports within forty-eight (48) hours of an inspector request.

Rule 5 Construction Storm Water Run-off Permits must be renewed after five years. This five (5) year period begins when construction start-up actually begins on the permitted site. Renewal requires the submittal of a new NOI ninety (90) days prior to the expiration of the existing permit.

Rule 5 permits also are now transferable, at IDEM's discretion. The current permittee must notify IDEM at least thirty (30) days before permit responsibility is transferred. IDEM must receive a written agreement between the current permittee and the new transferee citing a date of transfer of permit compliance responsibility. The transferee also must certify in writing his or her intent to make no changes to the site plan of operation that would significantly change the nature or quantities of pollutant run-off from the site.

Some of the Differences Between the Phase I and Phase II Rule 5 Construction Storm Water Run-off Permit

Previously, Indiana's storm water requirements did not apply to project sites of less than five (5) acres in size. **Now** all sites with one (1) or more acres must obtain a construction storm water permit from IDEM.

Previously, a project site owner was required to submit a Soil Erosion Control Plan (SECP) – rather than a Construction Plan – to their local Soil and Water Conservation District (SWCD). It could be submitted at the same time they submitted their NOI (Notice of Intent) letter to IDEM. It took the SWCD about 30 days to review the SECP, and it also took IDEM several weeks to review the NOI. Although the project site owner could be subject to enforcement action if either document was found to be deficient, any project site owner willing to take that risk could begin work immediately upon submittal of the NOI and SECP. **Now** a project site owner cannot submit an NOI until the SWCD has had up to twenty-eight (28) days to review and respond to the project site owner regarding the sufficiency of the Construction Plan (Part of which is the Storm Water Pollution Prevention Plan), nor can the project site owner begin work until at least forty-eight hours after submitting an NOI. So as much as thirty (30) days could pass between the time the project site owner submits a Construction Plan, and when he or she may begin construction.

Previously, a project site owner could not obtain a Rule 5 General Construction Storm Water Permit for a discharge to an [outstanding state resource or exceptional use water](#) and was instead required to get an individual NPDES permit for such discharges. **Now**, IDEM may, on a case-by-case basis, allow discharge to such waters under a Rule 5 permit. In instances when IDEM will not allow storm water construction discharges to such waters, the Rule 5 applicant (affected project site owner) will be notified by IDEM that an individual permit is required.

Previously, the developer of a "larger common plan of development or sale" such as a residential or commercial subdivision was responsible under the Rule 5 General Construction Storm Water Permit until all the homes and other structures were fully constructed. **Now**, such a project site owner can be eligible for "early release" from the permit if [certain conditions are met](#).

Previously, the Rule 5 public notice announcement provided only a legal description – often using only the township and range language of a surveyor – of the location of the project. **Now**, the street address must be included in the announcement so that the average person will understand where the project is to be located.

Now, the requirements of the Storm Water Pollution Prevention Plan, the Construction Plan reviews and numerous other general storm water quality requirements are substantially more extensive, and more protective of water quality than previously.

Now, the project site owner must submit copies of the NOI letter to the SWCD at the same time the NOI letter is submitted to IDEM. Additionally, once local designated MS4s (Municipal Separate Storm Sewer Systems) have a program in place, the project site owner also will have to submit a copy of the NOI letter to any local MS4 in which their project lies. This was not previously required.

Now, the project site owner must notify IDEM by phone, e-mail, or U.S. mail within forty-eight (48) hours of when actual construction begins on the project. This also is a new requirement.

Now, the Rule 5 Permit expires after five (5) years. **Previously**, there was no expiration date. Hence, it was difficult for IDEM to determine when permitted projects were completed, and how many of the Rule 5 permits it issued remained active.

Previously Rule 5 permits did not need to be renewed. Now they must be renewed every five years until the project is completed.

For Additional Information

The IDEM Wet Weather Section Storm Water Group also has developed some [guidance materials](#), including a Rule 5 [step-by-step process summary](#) that compliment the information on this page, and will be particularly helpful to persons who may need a Rule 5 permit.

Other useful Rule 5-related documents include:

- The [complete Rule 5 language](#) [PDF file]
- The list of Indiana streams that are [Outstanding State Resources or Exceptional Use Waters](#),
- The [Notice of Intent form](#) [PDF file], or application for a Rule 5 permit
- The [Notice of Termination](#) [PDF file] form required to be submitted by the project site owner after he or she has completed construction at their Rule 5 permitted site,
- The [Identification of Potentially Affected Persons](#) [PDF file] form, which must be submitted by any application seeking an individual NPDES permit
- The list of [Soil and Water Conservation Districts](#) that review Rule 5 Construction Plans

To speak to IDEM staff about Rule 5, contact:

Jay Davis
Rule 5 Coordinator
E-mail: jdavis@dem.state.in.us
Phone: 317/233-1864

or

Donna Palmer
Administrative Assistant
E-mail: dpalmer@dem.state.in.us
Phone: 317/233-0571

[Changing Ownership / Transferring General NPDES Permit-by-Rule Permits](#)

Disclaimer

This permit guide is intended to provide background information which should be useful in planning for a particular project that may require an environmental permit. It does not substitute for consultation with the appropriate regulatory agency and/or the appropriate rules or statute.