

Common plan of development

Since March of 2003, the United States Environmental Protection Agency has required all construction projects disturbing over one acre of land to obtain an NPDES/SDS stormwater permit. In addition, owners or operators also need permit coverage for smaller projects that are part of a larger common plan of development or sale that collectively will disturb one or more acres.

A common plan of development or sale means a contiguous area where multiple separate and distinct land disturbing activities may be taking place at different times, on different schedules, but under one proposed plan. "One 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 building in a common plan of development if, for example, you are building on a half-acre residential lot in a 10-acre development or are putting in a fast-food restaurant on a three-quarter acre parcel that is part of a 20-acre retail center. Of course, you must still meet the definition of 'operator' in order to be required to get permit coverage, regardless of the acreage you personally disturb. As a subcontractor, it is unlikely you would need permit coverage.

Multiple public projects within a jurisdiction

A public entity (like a municipality, state, tribe, or federal agency) need not consider all construction projects within their entire jurisdiction to be part of an overall "common plan." For example, construction of roads or buildings in different parts of a state, county, or city could be considered separate "common plans." Only the interconnected parts of a project would be considered to be a "common plan" (for example, a building and its associated parking lot and driveways, an airport runway and associated taxiways, or a building complex).

Where discrete construction projects within a larger common plan of development or sale are located one-quarter mile or more apart and the area between the projects is not being disturbed, each individual project can be treated as a separate plan of development or sale provided any interconnecting road, pipeline or utility project that is part of the same "common plan" is not being disturbed. Two oil and gas well pads separated by one-half mile could be treated as separate "common plans," for example. However, if the same two well pads and an interconnecting access road were all under construction at the same time, they would generally be considered as part of a single "common plan" for permitting purposes. If a utility company was constructing new trunk lines off an existing transmission, line to serve separate residential subdivisions located more than one-quarter mile apart, the two trunk line projects could be considered to be separate projects.

Master plans

If you have a long-range master plan of development where some portions of the master plan are a conceptual rather than a specific plan of future development and the future construction activities would, if they occur at all, happen over an extended time period, you may consider the "conceptual" phases of development to be separate "common plans" provided the periods of construction for the physically interconnected phases will not overlap. A university or an airport, for example, may have a long-range development concept for their property, with future development based largely on future needs and available funding. A school district could buy more land than needed for a high school with an indefinite plan to add more classrooms and a sports facility someday.

When construction activity has temporarily ceased

In general, permit coverage must remain active until all planned construction activity is completed. However, if only a small portion of the original common plan of development remains undeveloped and there has been a period of time where there is no ongoing construction activities, the permit may be terminated and you may re-evaluate your individual project based on the acreage remaining from the original "common plan." The permit allows projects that are nearly complete to terminate if all of the following conditions are met:

Construction activity has ceased for at least 90 days

At least 90% of all originally proposed construction activity has been completed and permanent cover has been established on those areas

On areas where construction activity remains, permanent cover has been established.

For example, a 50-acre residential development may consist of 100 lots, sized at one-half acre each. If only eight lots remained, sitting idle, with vegetative cover, while the other lots were built on and stabilized, the permittee would have the option to terminate the permit coverage. If a builder proposes to construct a home on one of the remaining lots in the future, no permit would be required as the lot is under one acre in size.

Permanent stormwater treatment systems

An important aspect of the common plan of development is the permanent stormwater management system. Any project or common plan of development is required to construct a permanent stormwater treatment facility if one or more acres of new impervious surfaces is being created.

Many common plans of developments will have multiple entities building on different areas and there may be just one stormwater management system to serve the entire project. For example, a developer may have obtained a permit for a housing development but only plans to build roads, selling the lots to individuals or homebuilders. In this case, it is necessary to size the permanent stormwater management system so that it includes the estimated impervious surface area created by the homes and driveways in addition to the roads. Leaving the requirements for providing permanent stormwater management to individual homebuilders should be avoided. If stormwater treatment is left to individual homebuilders, a design should be provided at the time of sale and a deed restriction should be placed on the property to ensure the system will be constructed and maintained. For a commercial development with large lots, it may be appropriate to leave the stormwater treatment requirements to individual lots.

Further information

If you have questions about the administrative details of the permit process go to www.pca.state.mn.us/water/stormwater/stormwater-c.html or call the Stormwater Hotline at 651-757-2119 or toll-free at 800-657-3804.