

Transportation Construction General Permit (TCGP) Guidance for Projects on Tribal Lands

This document is intended to clarify project permitting requirements for stormwater discharges from construction sites under the Clean Water Act (CWA), National Pollutant Discharge Elimination System (NPDES) for projects with one acre or more of disturbance and that fall within tribal boundaries.

Projects that fall within tribal boundaries require different processes because the Wisconsin Department of Natural Resources (DNR) does not have authority to issue coverage under the Wisconsin Pollutant Discharge Elimination System (WPDES) permit. In these cases, the Environmental Protection Agency (EPA) is the permitting authority and will issue permits under the NPDES program.

When working on tribal lands, it is important to work closely with the Regional Environmental Coordinator (REC) and Regional Tribal Liaison to ensure proper coordination with tribal governments. Working with tribal governments can be complicated, as each tribe has different delegated authorities, programs, permitting requirements, tribal laws, and personnel structures.

What is the difference between the WPDES Transportation Construction General Permit (TCGP) issued by the DNR and the NPDES Construction General Permit (CGP) issued by EPA?

Discharge of pollutants to waters of the state are regulated by the DNR through the WPDES program. The TCGP is a specific permit under the WPDES program. The DNR is delegated authority by the EPA to administer the program requirements of the CWA via the WPDES program, and TCGP, in Wisconsin except on tribal lands. Therefore, projects that fall within tribal boundaries are permitted through the EPA under the NPDES program. The CGP is a specific permit under the NPDES program.

Under both types of programs, it is important to determine if the general permit applies to the project. If projects do not meet the eligibility criteria, an individual permit will be necessary. Individual permits can take a long time to acquire, so it is important to communicate with agencies early in the design process to determine project specific requirements. These agencies include but not limited to the EPA, tribal governments, and US Army Corps of Engineers (wetland disturbances).

I have a project that is entirely located on tribal lands. Which permit do I need?

Projects that fall entirely within tribal boundaries, and have one acre or more of disturbance, require CGP coverage through EPA. Other requirements may also be enacted by individual tribes through tribal law.

I have a project that is on both tribal and non-tribal lands. Which permit do I need?

Projects that fall both on and off tribal lands may require both the TCGP coverage through the DNR and CGP coverage through EPA. Projects that are entirely within tribal boundaries would only need the CGP coverage by EPA and projects that are entirely outside of tribal boundaries would only need the TCGP coverage by the DNR. These permits are required for any project with one acre or more of land disturbing activities.

If my project exceeds the one acre land disturbance threshold, but the portion in the tribal boundary is less than one acre of land disturbance, do I still need EPA-CGP coverage?

These types of instances require special coordination. Projects with these situations should consult with their EPA representative to determine the project specific requirements. The current contact for EPA Region 5 is Krista McKim (mckim.krista@epa.gov, 312-353-8270).

If my project exceeds the one acre land disturbance threshold, but the portion outside of the tribal boundary is less than one acre of land disturbance, do I still need DNR-TCGP coverage?

At no time should there be a project that is one acre or more of total land disturbance and doesn't have either the DNR-TCGP or the EPA-CGP permit issued. These types of projects will require specific coordination with the REC and DNR Transportation Liaison to determine the need for TCGP coverage.

If I receive coverage under the EPA-CGP, is a separate water quality certification from EPA required?

When a project is covered under the EPA's CGP, the water quality certification is included with the coverage. The EPA may, however, need to grant separate water quality certifications for other permits, such as the 404 permit. A water quality certification under one permit does not necessarily guarantee water quality certification for another permit.

If I receive coverage under the EPA-CGP, is consultation with tribes still necessary?

Yes. The EPA-CGP is necessary to meet the requirements of the CWA and NPDES, however this does not replace other requirements that may be enacted by individual tribes through tribal law. Close coordination with the REC, Regional Tribal Liaison, and tribal personnel is necessary to ensure all environmental clearances are obtained for the project.

I have received water quality certification from the tribe. Do I still need EPA-CGP coverage?

Yes, you still need to apply for coverage under the EPA-CGP permit if the total land disturbance is one acre or more. The EPA grants authority to some tribes to administer some water quality programs, however this is separate from the NPDES requirements. There are no tribes in Wisconsin that have EPA granted authority to provide NPDES permit coverage – this can only be done by the EPA through their CGP.

Tribes that have water quality program authority are listed on the EPA's website at:

<https://www.epa.gov/tribal/tribes-approved-treatment-state-tas>

How do I know where the exact tribal boundaries are?

The only definite form of identifying tribal boundaries is through direct communication with the tribes, in conjunction with the Regional Tribal Liaison. There are two recommended websites available for identifying tribal boundaries, which are shown below. As these sites are not always current, these sites should be used as screening tools only. Additionally, be aware that tribal boundaries can also change over time, especially with properties that may go into or out of tribal trust.

<https://biamaps.doi.gov/indianlands/>

<https://tigerweb.geo.census.gov/tigerweb/>

Are there any tribal lands that the EPA-CGP does not apply to?

The 2022 EPA-CGP is available for use on all federally recognized tribal lands in Wisconsin, as long as the project meets the eligibility criteria for the permit. Prior to the 2022 EPA-CGP, all projects that fell within the boundaries of the Sokaogon Chippewa Community (Mole Lake) required an individual permit; however, this is no longer the case.

Some tribes have special requirements within the EPA-CGP that need to be adhered to. These can be found in Section 9 of the EPA-CGP.

As stated above, however, projects need to ensure they meet the eligibility criteria for the EPA-CGP, otherwise an individual permit from EPA will be required.

How do I apply for coverage under the EPA-CGP?

The process and information needed to apply for EPA-CGP coverage is very similar to TCGP coverage through the DNR, although some of the requirements may be different. The EPA uses their NPDES eReporting Tool (NeT) for all process related to applying for and terminating the NPDES-CGP.

The EPA's NPDES eReporting Tool (NeT) can be accessed at the below link:

<https://npdes-ereporting.epa.gov/net-cgp/action/login>

EPA has a User Guide that will answer most questions related to the electronic process:

[EPA's CGP NeT User Guide](#)

The EPA permitting site and additional guidance can be found at:

<https://www.epa.gov/npdes/stormwater-discharges-construction-activities>

How long do I need to plan for EPA processing the NPDES CGP coverage?

Coverage begins 14 calendar days after EPA confirms that it has received a completed Notice of Intent (NOI) unless the EPA notifies you that your authorization is delayed or denied. It is important to review the requirements of the EPA-CGP with the REC to ensure the project meets the eligibility criteria. Projects that do not meet eligibility under the CGP will be required to apply for an individual permit, which can take more than 6 months to acquire.

What other permitting and tribal coordination is required?

This document is intended to specifically address questions related to DNR-TCGP and EPA-CGP processes. There may be other permits and tribal coordination necessary, such as wetland permitting and permits that are more specific to the individual tribes. Please coordinate with the REC and regional tribal liaison for determining the project specific needs for these items.