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Primary and Secondary Operators under the Construction General Permit for Storm Water Discharges (TXR150000)

This guidance document is to assist entities in determining if they are a primary operator or a secondary operator under the Construction Storm Water General Permit (CGP). Additionally this guidance will discuss who must submit a Notice of Intent (NOI) and an operator's responsibility towards compliance with the CGP and the Storm Water Pollution Prevention Plan (SWP3).

The difference in obtaining authorization under the CGP for Primary and Secondary Operators is only relevant at large construction sites; therefore this guidance document is directed to those operators. Large construction activities disturb more than Five acres or are part of a larger common plan of development or sale that in total, will disturb more than Five acres.

Primary Operator

A primary operator is a person(s) associated with a construction activity who meets either of the following:

- has operational control over the construction plans and specifications; or
- has day-to-day operational control over the activities at a site to the extent necessary to ensure compliance with the SWP3.

Secondary Operator

A secondary operator is a person(s) associated with a construction activity whose operational control is limited to:

- the employment of other operators; or
- the ability to approve or disapprove changes to the construction plans and specifications.

The following table describes the main differences between primary and secondary operators at large sites:

Primary Operators	Secondary Operators
Authority: Primary Operators can: <ul style="list-style-type: none">▪ make changes or initiate modifications to the construction plans and specifications▪ direct workers at the site in order to maintain compliance with the SWP3	Authority: Secondary Operators can: <ul style="list-style-type: none">▪ approve or disapprove cost changes initiated by another permitted operator▪ hire or fire another operator <i>Secondary Operators cannot initiate changes to the construction plans and specifications</i>
Obtaining Permit Coverage: <ul style="list-style-type: none">▪ complete & submit an NOI<ul style="list-style-type: none">○ Seven days prior to the start of construction if submitting a paper application○ prior to the start of construction if submitting an electronic application	Obtaining Permit Coverage: <ul style="list-style-type: none">▪ If there is not a primary operator at the site, the secondary operator would become the primary operator and follow the same guidance for obtaining permit coverage as a primary operator▪ complete & post a copy of the secondary operator site notice at the site▪ submit a copy of the complete site notice to the

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Primary Operators	Secondary Operators
<ul style="list-style-type: none"> ▪ submit a copy of the NOI to the local MS4 Operator ▪ post a copy of the NOI at the site ▪ complete & post a copy of the primary operator site notice at the site 	<p style="text-align: center;">local MS4 operator</p> <p>A secondary operator is not prohibited from submitting an NOI as a primary operator. This would provide the operator with more flexibility to direct work at the site as the project progressed.</p>
<p>SWP3 Responsibility:</p> <ul style="list-style-type: none"> ▪ all operators must ensure the SWP3 adequately addresses storm water runoff from the site as indicated in the permit ▪ all operators must ensure that the best management practices are selected, installed and maintained appropriately ▪ all operators must ensure that the areas under the control of each operator are clearly defined ▪ all operators must ensure that any operators who may be impacted by modifications in areas under their control are notified in a timely manner ▪ both primary and secondary operators may participate in a shared SWP3 ▪ multiple operators at a single site may share a single SWP3 <ul style="list-style-type: none"> ○ the SWP3 must clearly list the name and authorization numbers for each operator ○ the SWP3 must clearly indicate the responsibilities of each operator 	
<p>Terminating Coverage:</p> <ul style="list-style-type: none"> ▪ complete & submit an Notice of Termination (NOT) to the TCEQ within 30 days of <ul style="list-style-type: none"> ○ reaching final stabilization, ○ transferring operational control of the site, or ○ obtaining alternative coverage under a TPDES individual permit ▪ submit a copy of the NOT to the local MS4 Operator ▪ remove the site notice posted at the construction site 	<p>Terminating Coverage:</p> <ul style="list-style-type: none"> ▪ remove the site notice posted at the site ▪ Complete the bottom portion of the site visit notice and submit the site notice to the local MS4 within 30 days of: <ul style="list-style-type: none"> ○ reaching final stabilization, ○ transfer of operational control of the site, or ○ obtaining alternative coverage under a TPDES individual permit

Examples

Example 1

Morningside Development Company (MDC) owns 1000 acres of land that they are developing into a residential subdivision. MDC hires an engineering firm to draw up the construction plans and Moon River Construction to be the general contractor for the project. Moon River Construction is responsible for day-to-day operations, including compliance with all applicable environmental rules. Midway through the project MDC decides to include a commercial development within the boundaries of the construction site and increase the green space within the residential portion of the site. MDC directs their engineering firm to modify the construction plans accordingly. Who is the operator?

MDC is a primary operator because they have control of the construction plans and specifications including the ability to make changes to those plans and specifications.

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Moon River Construction is a primary operator because they have day-to-day operational control of the site and the construction activities to the degree necessary to ensure compliance with storm water permitting requirements.

The engineering firm is not an operator. They have been hired by MDC to create and subsequently modify the construction plans and specifications, but have no authority to initiate changes unless directed by their client.

Example 2

Happy Valley ISD has hired Moon River Construction to build a new middle school campus. The project will be a turnkey operation and Moon River Construction will be responsible for all aspects of the construction project from start to finish. Moon River Construction will maintain operational control of the site, including the ability to initiate changes to the plans and specifications to meet any local ordinance requirements and employ all subcontractors. Happy Valley ISD will provide the final construction plans and specifications to Moon River Construction and have the ability to approve or disapprove changes to the plans and specifications, but will not have any other involvement at the site during the construction project.

Who is the operator?

Moon River Construction is a primary operator because they control of the day-to-day operations at the site and the ability to initiate changes to the construction plans and specifications.

Happy Valley ISD is a secondary operator because after providing the final construction plans and specifications to Moon River Construction, they will not have any additional involvement at the site, except to approve or disapprove changes to the construction plans and specifications that Moon River may feel are necessary to complete the project. Because this is a turnkey project, once the construction plans and specification have been provided to the Moon River Construction, Happy Valley ISD will be unable to initiate additional changes or modifications to those plans. In the event that Moon River Construction quits the project, Happy Valley ISD may need to become the primary operator or they may hire another construction company to act in that role.