

Frequently Asked Questions on EPA's NPDES General Permit for New and Replacement Surface Discharging Systems in Illinois

1. What is the relationship of the NPDES general permit ILG62 to construction permits for surface discharging systems issued by local county health departments prior to the February 10, 2014 effective date of the general permit?

The general permit authorizes a discharge (emphasis added) of pollutants from new and replacement surface discharging systems to waters of the United States, not the actual systems themselves. The following guidance regarding construction permits for surface discharging systems that will discharge pollutants to waters of the United States, issued by local county health departments prior to the effective date of the general permit is provided below.

Local county health departments may continue to issue construction permits for surface discharging systems up until the general permit becomes effective on February 10, 2014. However, any construction permit issued by a local county health department for a surface discharging system that will discharge pollutants to a water of the United States must be installed and operational before the February 10, 2014 effective date of the general permit to avoid being classified as a new or replacement system.

Even though a construction permit for a surface discharging system could be approved by a local county health department prior to the effective date of the general permit, this does not mean that the system can be installed on or after the February 10, 2014 general permit effective date, thus circumventing the need for a permit to discharge.

EPA would also like to point out that surface discharging systems that receive a construction permit prior to the effective date of the general permit but are installed on or after the effective date may not qualify for coverage under the general permit retroactively and could potentially be out of compliance with the Clean Water Act. That is because these surface discharging systems may not qualify under the technological or economic feasibility criteria of the general permit. These applicants would be faced with taking out their non-compliant surface discharging system, and installing a compliant soil-based system, or operating out of compliance with the general permit. Applicants who have received a construction permit prior to the effective date but will not have an operational system until after the effective date of the general permit should be made aware of this risk.

2. Who is responsible for making the determination about whether a discharge of pollutants from a surface discharging system will enter waters of the United States?

Following is a response from the response to comments document that addresses this question and also provides additional information on waters of the United States. The response indicates that the homeowner is responsible for making the determination. EPA

expects that the homeowner will make the decision based on information provided by the person who conducts the soil investigation. The response from the response to comments document is as follows:

Congress, in Section 502 of the CWA, defined “navigable waters” broadly as encompassing all “waters of the United States.” EPA has issued a regulatory definition of the term “waters of the United States” at 40 CFR § 122.2. EPA’s definition includes, among other things, traditional navigable waters, tributaries of traditional navigable waters, and wetlands that are adjacent to traditional navigable waters or their tributaries. The Supreme Court has determined the scope of Congress’ intent to regulate “waters of the United States” in several opinions of the Court, most recently in the case of Rapanos v. United States, 126 S. Ct. 2208 (2006).

EPA has provided guidance to individuals and companies impacted by the Rapanos decision; that guidance and other materials are set forth at <http://water.epa.gov/lawsregs/guidance/wetlands/CWAwaters.cfm>. This guidance discusses EPA’s jurisdiction over traditional navigable waters, relatively permanent non-navigable streams, non-navigable streams that are not relatively permanent, and wetlands adjacent to those waters to help EPA and the Corps of Engineers, as well as citizens, identify whether particular surface waters are “waters of the United States.”

It is the responsibility of the potential discharger to determine whether or not his or her system might discharge to a water of the United States. EPA realizes, though, that the Rapanos guidance may be difficult for the average person to apply. As a common sense way of evaluating whether you are required to be covered by a permit, if you were to install a new or replacement surface discharging system on your land, would effluent or pollutants (even diluted ones) from your system end up in a water of the United States or a conveyance, such as a ditch, drainage pipe, channel, tunnel, conduit, discrete fissure or other means that leads to a water of the United States? In evaluating this question, consider that rain water, irrigation activities, lawn sprinkling systems and any other ways that water can carry pollutants to waters of the United States. If so, even though pollutants would not be carried to waters of the United States unless your area experienced an exceptionally wet season, you are still required to obtain coverage under a permit. Only if you are sure that your system would not discharge pollutants to a water of the United States or a conveyance that leads to a water of the United States should you forego obtaining a permit for a surface discharging system. If you do not obtain a permit, but actually discharge, you may be subject to an enforcement action under the CWA.