

Are your foreclosed properties in violation of the Florida Department of Environmental Protection's (FDEP) National Pollutant Discharge Elimination System (NPDES) Permit and one of Florida's five Water Management District's (WMD) Environmental Resource Permit (ERP)?

NOTICE

Failure to comply could result in large fines, even if you have halted construction.

Incomplete construction activities must still comply with BOTH permits and are subject to:

1. Routine inspections
2. Maintenance of any temporary erosion control structures
3. Subject to fines by both the FDEP and WMD, if non-compliant

GLE Associates, Inc., can insure your properties are in compliance with the NPDES and ERP Permits.... **HOW?**

- GLE has developed a process for evaluation and stabilization of your properties.
- This comprehensive procedure will meet the regulatory requirements in a cost effective manner and reduce liability of a lender who forecloses on a property.

Please find the attached in-depth article that further describes the NPDES and ERP Permits and how it affects your foreclosed properties with incomplete construction activities.



For further information please
call us or visit our website:
1-888-453-4531
www.gleassociates.com





Stormwater Discharge from Construction Sites in Florida



Stormwater Discharge Regulatory Agencies:

The regulation of stormwater discharge in Florida is administered by two separate but interrelated agencies, the Florida Department of Environmental Protection (FDEP) and the Regional Water Management Districts. The state is divided into five Water Management Districts (WMDs); Northwest FL WMD, Suwannee River WMD, St Johns River WMD, Southwest FL WMD and South FL WMD.

The FDEP & NPDES Permit:

The FDEP administers US EPA's Generic Permit under the **National Pollutant Discharge Elimination System (NPDES)** regulatory program. The Generic Permit for Stormwater Discharge from Large and Small Construction Activities dated February 2009, specifies the requirements for site disturbance. *Compliance with this permit is required:*

- For any land disturbance activities of greater than 1 acre for a single project.
- For any land disturbance activities less than 1 acre that are part of an overall development e.g., subdivision, anywhere in the State of Florida.

The permit generally contains the requirements designed to prevent the impacts of sediment and/or other pollutants to state waters on or off a construction site. *Failure to comply with the requirements of this permit can result in a fine of \$2,500 per violation, per day.*

The **NPDES permit** requires the preparation of a **Stormwater Pollution Prevention Plan (SWPPP)** prior to performing any land disturbing activities. At least two days prior to beginning construction, a Notice of Intent (NOI) must be submitted to the FDEP. The entire **SWPPP** is not required to be submitted, but the plan must be kept on site or at an alternate location as specified in the NOI.

THE WMDs & ERP Permit:

The WMDs are involved in the approval of any construction project that will affect wetlands, alter surface water flows or contribute to water pollution. *This essentially covers any construction activity except re-roofings, face-lifts or interior renovations.* Prior to beginning construction, an **Environmental Resource Permit (ERP)** must be obtained. Included in the site engineering design are the requirements for **Erosion and Sediment Control (ERSC)**.

Compliance During Construction:

During construction, the contractor must comply with the requirements of both the **NPDES** permit and the **ERP**. Both agencies can and do perform site inspections and assess fines for violations. For all practical purposes, the requirements of the **SWPPP** and the **ERSC** are the same. At the completion of construction, a Notice of Termination (NOT) is submitted to the FDEP and a written Statement of Completion and Certification (SOCC) and Request for Transfer to Operation are submitted to the WMD.

Unfortunately, on sites where construction is partially completed, but has stopped, compliance with these requirements does not end, and compliance by a new owner is often not easy or straightforward. The following paragraph summarizes the complex issues and procedures that would normally be performed on a typical project.



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Under Normal Construction Conditions:

During the design of a construction project, a land survey, site and general civil engineering drawings are prepared. These drawings are typically submitted to the local planning or engineering departments having jurisdiction. The site/civil engineering drawings, which contain the **ERSC** are also submitted to the appropriate WMD. Upon approval by all departments, a site construction permit and an **ERP** are obtained. The site survey, and **ERSC** will become components of a **SWPPP**. Both plans require the implementation of Best Management Practices to prevent impacts from erosion and sedimentation either to state waters, wetlands and/or offsite. A NOI is then submitted prior to beginning construction. Should plans change during construction, which affect and change the **SWPPP**, an amendment to the plan is submitted. Once a construction project has been completed and all landscaping, site improvements etc. are in place and working properly, the NOT is submitted to the FDEP and the SOCC submitted to the WMD. After approval by both agencies, the project is considered complete. This is similar to a building permit where a Certificate of Occupancy is issued by the building department.

Incomplete Construction:

For a site where construction has stopped but is partially complete, the property may or may not be in current compliance with either the **ERSC** portion of the **ERP** or the **SWPPP**. *Even if it were in compliance at the time of foreclosure:*

- The protective measures in place would only match the current stage of construction when the work stopped.
- The extent and condition of site improvements would most likely not allow for submittal and approval of a NOT or a SOCC.
- Consequently, the project would still be subject to the requirements of both permits, including routine inspections, maintenance of any temporary erosion control structures, etc., and subject to fines by both the WMD and FDEP, if not in compliance.

Since a lender who forecloses on a project under construction must now develop and submit an amended NOI, the “existing conditions” are subject to the following:

- They must reflect the current site status, not the original conditions included in the approved **SWPPP**.
 - Unless the construction will be completed, with all final site improvements, including stormwater, landscaping, etc., the final requirements must be modified in order to obtain a NOT.
 - The **ERP**, must be modified and approval of any changes to the permit obtained from the WMD.
 - All of this could require a full site evaluation, including but not limited to, a new land survey and new designs.
 - Failure to obtain new regulatory approvals would also constitute violations.
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Stormwater Discharge from Construction Sites in Florida



How to Comply with the FDEP and NPDES Permit - Incomplete Construction:

Typically, the most expedient and cost effective way for a lender to comply with the NPDES permit requirements would be to *prepare and submit an amendment to the original SWPPP*.

- The amendment would reflect the current condition of the site and include any improvements that would be implemented to stabilize the site.
- The ultimate goal would be to provide enough improvements to allow for submittal and approval of a NOT and get the site off of the FDEP list.
- This would eliminate the need for regular inspections.
- The degree of improvements could range from absolutely nothing to completion of the work reflected in the original civil construction plans.

How to Comply with the WMDs and ERP Permit - Incomplete Construction:

The same does not hold true for the ERP. Much of the value of a development is in the permit approvals and the lender will not want to lose the value of the asset by closing out the ERP. Typically, the ERP is valid for up to five years from the date the permit is issued by the WMD, however, it still would be important to stabilize the site to prevent any violations but keep the permit open.

The process for an evaluation and stabilization would consist of the following steps:

1. Obtain the original NOI from the FDEP and the SWPPP from the original Owner/Contractor.
2. Obtain the ERP from the appropriate WMD.
3. Review the plans and perform a site visit.
4. Document the site with regard to any existing permit violations.
5. Document current site conditions and compare with the plans.
6. Determine alternatives for site stabilization.
7. Immediately correct any permit violations.
8. Determine the most cost effective and feasible plan for stabilization.
9. Submit a plan amendment to the FDEP.
10. Upon approval of the amendment stabilize the site.
11. Monitor the site until improvements are installed and fully functional.
12. Submit a NOT to satisfy the NPDES requirements

While some sites may not require all of these steps, and on others it may not be feasible to obtain a NOT, this general procedure will meet the regulatory requirements in a cost effective manner and reduce the liability of a lender who forecloses on a property.

Please find the attached organizational chart that outlines each step that is taken in obtaining an NPDES and ERP and how to maintain a stabilized site during ceased construction activity.

Stormwater Discharge from Construction Sites in Florida

FDEP
Permit Issued:
NPDES

WMDs
Permit Issued:
ERP Permit

Permit is required for:

1. Any land disturbance activities greater than 1 acre for a single project.
2. Any land disturbance activities less than 1 acre that are part of an overall development.

During Design:

- Site/Civil drawings, which contain the ERSC are submitted to the WMD.
- Upon approval ERP is obtained
- Site survey & **ERSC** become components of **SWPPP**.
- Both plans require Best Management Practices to prevent Stormwater Discharge.

Permit is required for:

1. Any construction project that will affect wetlands, alter surface water flows or contribute to water pollution.
2. Covers any construction activity except re-roofings, face-lifts or interior renovations.

NPDES Permit requires preparation of an SWPPP prior to land disturbing activities; An NOI must be submitted two days prior to construction, the SWPPP must be kept on-site or at a location specified in the NOI.

During construction contractor must comply with both Permits. For all practical purposes SWPPP and ERSC are the same.

EPR must be obtained prior to construction, included in the site engineering design are the requirements for ERSC.

Failure to Comply with Permit:
\$2,500 fine/per day

How to Comply with NPDES - Incomplete Construction:

Prepare and submit an amendment to the original **SWPPP**.

Amendment would reflect current condition of the site and include improvements that would result in a approved NOT.

Degree of improvements could range from nothing to completion of the work reflected in the original civil construction plans.

Incomplete Construction Projects:

The project may or may not be in current compliance with the **SWPPP** or the **ERSC** portion of the ERP, the extent and condition of site improvements would most likely not allow for submittal and approval of a NOT or a SOCC.

The incomplete project must still comply with BOTH permits including:

1. Routine inspections
2. Maintenance of any temporary erosion control structures
3. Subject to fines by both the FDEP and WMD, if non-compliant

How to Comply with ERP - Incomplete Construction:

Much of the value of a development is in the permit approvals and the lender will not want to lose the value by closing out the ERP; ERP is valid for up to five years, it is important to stabilize the site to prevent violations and keep the permit open.

The process for an evaluation and stabilization would consist of the following steps: *(Some sites may not require all steps and on others it may not be feasible to obtain a NOT)*

1. Obtain the original NOI from the FDEP and the SWPPP from the original Owner/Contractor.
2. Obtain the ERP from the appropriate WMD.
3. Review the plans and perform a site visit.
4. Document the site with regard to any existing permit violations.
5. Document current site conditions and compare with the plans.
6. Determine alternatives for site stabilization.
7. Immediately correct any permit violations.
8. Determine the most cost effective and feasible plan for stabilization.
9. Submit a plan amendment to the FDEP.
10. Upon approval of the amendment stabilize the site.
11. Monitor the site until improvements are installed and fully functional.
12. Submit NOT to satisfy the NPDES requirements

FDEP: Florida Department of Environmental Protection
NPDES: National Pollutant Discharge Elimination System
SWPPP: Stormwater Pollution Prevention Plan
WMDs: Water Management Districts
ERP: Environmental Resource Permit
ERSC: Erosion and Sediment Control
NOT: Notice of Termination
NOI: Notice of Intent
SOCC: Statement of Completion and Certification

