

**ENVIRONMENTAL PROTECTION COMMISSION[567]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code sections 455B.103A and 455B.105(3), the Environmental Protection Commission (Commission) hereby amends Chapter 64, “Wastewater Construction and Operation Permits,” Iowa Administrative Code.

The amendment to Chapter 64 revises General Permit No. 2, which authorizes the discharge of storm water from construction sites. Substantive changes in General Permit No. 2 are required to implement the federal effluent guidelines for construction and development point sources. These guidelines are found at 40 CFR 450.21. Most of the measures in the federal effluent guidelines are already included in General Permit No. 2. The changes adopted in General Permit No. 2 involve topsoil preservation at construction sites. The Code of Federal Regulations requires permittees to minimize soil compaction and, unless infeasible, preserve topsoil. Currently, the Commission defines this requirement as the preservation of at least 4 inches of topsoil at construction sites when this is consistent with land use practices and if at least 4 inches of topsoil existed on the site prior to construction.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 18, 2015, as **ARC 1873C**. The public comment period for the proposed amendment to Chapter 64 regarding topsoil preservation ended April 1, 2015, during which three public hearings were held in Cedar Rapids, Davenport and Des Moines. Over 700 mailed, e-mailed and verbal comments were received. These comments were supplied to the Commission and made available to the public on the Department’s Web site.

Two changes have been made since publication of the Notice of Intended Action. In the revision of storm water General Permit No. 2, the word “authorization” has been inserted in the underscored text at the end of the third sentence as follows:

“‘Unless infeasible, preserve topsoil’ shall mean that, unless infeasible, topsoil from any areas of the site where the surface of the ground for the permitted construction activities is disturbed shall remain within the area covered by the applicable General Permit No. 2 authorization.”

This change results in the requirement that topsoil must remain in the area of the construction covered by the authorization issued to the site under General Permit No. 2 rather than under General Permit No. 2 itself.

The second change made since publication of the Notice of Intended Action is to the amended date in subrule 64.15(2). This date has been changed from July 15, 2015, to August 12, 2015.

The following revisions to General Permit No. 2 are adopted:

Part IV.D.2.A.(2).(c) of the storm water General Permit No. 2 is revised as follows:

**A.(2).(c).** Unless infeasible, the following measures shall be implemented at all sites: utilize outlet structures that withdraw water from the surface when discharging from basins, provide and maintain natural buffers around surface waters; and direct storm water to vegetated areas to both increase sediment removal and maximize storm water infiltration ~~and minimize soil compaction~~. ~~Topsoil shall be preserved at all construction sites unless land use precludes the practice. The requirement to preserve topsoil shall be met only when the depth of topsoil after soil disturbing activities have been completed and final stabilization achieved for the permitted activity is equal to, or greater than, 4.0 inches, including soil contained in sod, on all areas of the site where the surface of the ground disturbed for the permitted construction activities is exposed and not covered by concrete, asphalt, gravel or other such material and where 4.0 inches or more of topsoil existed prior to the commencement of soil disturbing activities that are permitted under the current permit authorization for the site. On areas where less than 4.0 inches of topsoil existed prior to the commencement of soil disturbing activities that are permitted under the current permit authorization for the site, the minimum depth of topsoil after soil disturbing activities have been completed and final stabilization achieved for the permitted activity shall be equal to, or greater than, the depth of topsoil that existed prior to the commencement of soil disturbing activities that are~~

~~permitted under the current permit authorization for the site. The final topsoil depth is to be measured after the soil has been compacted in a fashion generally considered adequate for an established lawn and so that the expected settling that will occur after measurement will be minimal and shall include the soil contained in any sod that has been placed on the site. The type of topsoil at the site after soil disturbing activities have been completed and final stabilization achieved for the permitted activity shall be similar to that which exists or existed in the general area of the site. The permittee(s) shall minimize soil compaction and, unless infeasible, preserve topsoil. "Infeasible" shall mean not technologically possible, or not economically practicable and achievable in light of the best industry practices. "Unless infeasible, preserve topsoil" shall mean that, unless infeasible, topsoil from any areas of the site where the surface of the ground for the permitted construction activities is disturbed shall remain within the area covered by the applicable General Permit No. 2 authorization. Minimizing soil compaction is not required where the intended function of a specific area of the site dictates that it be compacted. Preserving topsoil is not required where the intended function of a specific area of the site dictates that the topsoil be disturbed or removed. The permittee(s) shall control storm water volume and velocity to minimize soil erosion in order to minimize pollutant discharges and shall control storm water discharges, including both peak flowrates and total storm water volume, to minimize channel and stream bank erosion and scour in the immediate vicinity of discharge points. An affidavit signed by the permittee(s) may be submitted to demonstrate compliance.~~

For construction activity which is part of a larger common plan of development, such as a housing or commercial development project, in which a new owner agrees in writing to be solely responsible for compliance with the provisions of this permit for the property which has been transferred or in which the new owner has obtained authorization under this permit for a lot or lots (as specified in subrule 567-64.6(6) of the Iowa Administrative Code), the topsoil preservation requirements described above must be met no later than at the time the lot or lots have reached final stabilization as described in this permit.

~~For sites where less than 4.0 inches of topsoil is to be in place after soil disturbing activities have been completed and final stabilization achieved for the permitted activity, a soil survey conducted by properly qualified personnel who regularly conduct soil surveys as part of their normal job duties must be conducted prior to commencement of soil disturbing activities that are permitted under the current permit authorization for the site. The results of the soil survey shall become part of the Pollution Prevention Plan and shall indicate the depth of topsoil at a suitable number of points on the site commensurate with standard engineering practices established for the size of the site.~~

The topsoil preservation requirement described above shall be implemented for projects that have not received an authorization under this permit prior to October 1, 2012. The topsoil preservation requirements are not required to be implemented for projects that have been authorized prior to October 1, 2012. In residential and commercial developments, a plat is considered a project. For other large areas that have been authorized for multiple construction sites, including those to be started at a future date, such as those located at industrial facilities, military installations and universities, a new construction project not yet surveyed and platted out is considered a project. This stipulation is intended to be interpreted as requiring the topsoil preservation requirements on development plats and construction activities on other extended areas that may have several construction projects permitted under the same authorization to be implemented on those projects not yet surveyed and platted out prior to October 1, 2012 even if other plats and construction activities in the same development or other extended area were authorized prior to October 1, 2012.

It is not the intent of the Commission that the textual changes in General Permit No. 2 be adopted in the Iowa Administrative Code but that these changes be made in the general permit itself, which is adopted by reference into the Iowa Administrative Code.

Copies of the revised General Permit No. 2 are available upon request from the Department at 502 East 9th Street, Des Moines, Iowa 50319; or by telephone at (515)725-8417.

After analysis and review of this rule making, a positive impact on jobs could exist. At the time the 4-inch topsoil preservation requirement was adopted, it was generally believed by the Commission and stakeholders that the fiscal impact of the requirement would be minimal and would not significantly impact developers, builders, or home buyers. In early 2014, various members of the development community requested that the language of General Permit No. 2 be changed to mirror the federal standard of preserving topsoil, unless infeasible. These stakeholders reported that actual costs of implementation of the 4-inch topsoil preservation requirement were significantly higher than anticipated, including costs associated with having to verify the requirement was uniformly met throughout the construction site. Cost impact estimates have been reported to vary from several hundred dollars per lot to several thousand dollars per lot. This economic concern led to the formation of an Executive Order (EO) 80 Stakeholder Group, which convened meetings and obtained public input in 2014. The EO 80 Stakeholder Group recommended to the Commission that the topsoil preservation requirement in General Permit No. 2 be changed to more closely align with the federal language, with some additional verbiage added. The EO 80 Stakeholder Group indicated that the revisions will result in a net reduction in costs to residential developers and home builders, which would lead to lower prices for home purchasers. On September 16, 2014, the Commission directed the Department of Natural Resources (Department) to initiate rule making to adopt the EO 80 Stakeholder Group recommendation for General Permit No. 2, with further, minor changes recommended by the Commission.

This amendment is intended to implement Iowa Code chapter 455B, division I.

This amendment shall become effective August 12, 2015.

The following amendment is adopted.

Amend subrule 64.15(2) as follows:

**64.15(2)** Storm Water Discharge Associated with Industrial Activity for Construction Activities, NPDES General Permit No. 2, effective October 1, 2012, to October 1, 2017, as amended on ~~March 26, 2014~~ August 12, 2015.

[Filed 6/17/15, effective 8/12/15]

[Published 7/8/15]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/8/15.