



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

This document is intended to help individuals, businesses, and governments determine if they are a primary or a secondary operator under the stormwater construction general permit. It also discusses who must submit a Notice of Intent (NOI) and an operator’s responsibility towards compliance with the permit and the Stormwater Pollution Prevention Plan (SWP3). This guide is not intended to replace the rules but merely a tool to assist with compliance.

The distinction between how primary and secondary operators obtain authorization under the permit is only relevant at large construction sites; therefore, this guide is meant for those operators. Large construction activities disturb 5 or more acres or are part of a larger common plan of development or sale that, in total, will disturb 5 or more acres.

Primary vs. Secondary Operators at Large Construction Sites

| Authority Over | Primary Operators Can | Secondary Operators Can |
|-----------------------------------|---|--|
| Construction Plans and Activities | <ul style="list-style-type: none"> Exercise onsite operational control over construction plans and specifications including the ability to make changes. Have day-to-day operational control of those activities at a construction site that are necessary to ensure compliance with a SWP3 for the site or other permit conditions. | <ul style="list-style-type: none"> Approve or disapprove changes to construction plans and specifications. Hire or fire an operator such as a general contractor. <p><i>Secondary operators cannot exercise operational control over activities at the site.</i></p> |
| Obtaining Permit Coverage | <ul style="list-style-type: none"> Complete and submit an NOI: <ul style="list-style-type: none"> seven days before the start of construction if submitting a paper application; or before construction if submitting an electronic application. <p>As of September 1st, 2018, you must submit your NOI electronically through STEERS (ePermits) or request and obtain a waiver from electronic reporting from TCEQ.</p> <ul style="list-style-type: none"> Complete and post the primary-operator site notice at the site entrance. Include a copy of the notice with the operator’s original signature in the SWP3. Submit a copy of the NOI to the operator of the local municipal separate storm-sewer system (MS4). | <ul style="list-style-type: none"> Complete and post the secondary-operator site notice at the site entrance. Include a copy of the notice with the operator’s original signature in the SWP3. Submit a copy of the completed site notice to the local MS4 operator. <p><i>A secondary operator can submit an NOI as a primary operator, which will allow more flexibility to direct work at the site as the project progresses.</i></p> <p>If there is no primary operator at the construction site, the secondary operator becomes responsible for the requirements of a primary operator.</p> |
| Terminating Coverage | <ul style="list-style-type: none"> Complete and submit a Notice of Termination 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 notice to the local MS4 operator. Remove the posted site notice and temporary controls such as silt fencing. | <ul style="list-style-type: none"> Remove the posted site notice and temporary controls such as silt fencing. Complete the bottom portion of the site notice, and submit it 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. |

Both primary and secondary operators must ensure that:

- the SWP3 adequately addresses stormwater runoff from the site as indicated in the permit;
- best management practices are selected, implemented, and maintained;
- the areas under the control of each operator are clearly defined; and
- any operators who may be affected by modifications in areas under their control are notified in a timely manner.

Multiple operators at a site may share a single SWP3 if it clearly indicates the name, signature, authorization number, and specific responsibilities of each operator. Both primary and secondary operators may participate in a shared SWP3.

Example 1

Q. Morningside Development Company (MDC) owns 1,000 acres of land that it is 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 the engineering firm to modify the construction plans accordingly.

Who is the operator?

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

Moon River Construction is a primary operator because it has day-to-day operational control of the site and the construction to ensure compliance with stormwater permitting requirements.

The engineering firm is not an operator. It has been hired by MDC to create and subsequently modify the construction plans and specifications, but has no authority to

initiate changes unless directed by the client.

Example 2

Q. 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 comply with any local ordinances and employ all subcontractors.

Happy Valley ISD will supply the final construction plans and specifications to Moon River Construction and has 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?

A. Moon River Construction is a primary operator because it controls the day-to-day operations at the site and can 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—the ISD 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 specifications have been turned over to the Moon River Construction, Happy Valley ISD will be unable to initiate additional changes or modifications to those plans. *If Moon River Construction quits the project, Happy Valley ISD may need to become the primary operator or may hire another construction company to act in that role.*