

## **20-CP “Who Is an Operator?” Guide**

This guide provides the definition of an ‘operator’ in the 20-CP NPDES General Permit for Stormwater Discharges Associated with Construction Activity and an evaluation process to help determine which parties have that role. 20-CP general permit conditions require each operator to submit their own NOI for coverage.

For the purposes of the 20-CP (Part I.B.1 Eligibility Requirements) an ‘operator’ is defined as:

- a.** The party has operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications (e.g., in most cases this is the owner of the site); or
- b.** The party has day-to-day operational control of those activities at a project that are necessary to ensure compliance with the permit conditions including authorization to direct workers at a site to carry out activities required by the permit, correct violations (including repair or installation of erosion and sediment controls (E&SC)), and/or halt construction activity until violations of the permit are corrected; in most cases this is the general contractor (as defined in Appendix A) of the project).

Operators will answer ‘yes’ to any (*not necessarily all*) of the questions below:

1. Does the party control the site plans? Do they have operational control over the construction plans and specifications, including the ability to make modifications? (usually the owner or developer, institution or government entity)
2. Does the party have day-to-day operational control of activities necessary to ensure compliance with the permit? Examples might include: Owner/developer or general contractor in control of hiring/firing subcontractors and/or additional operator
3. Can the party direct workers at the site to carry out activities required by the 20-CP? Example: General contractor/owner that directs third party inspectors
4. Can the party carry out corrective actions independently, including repairing/replacing ESC controls?
5. Can the party halt work until violations are corrected?

**This guidance emphasizes that it is the party’s operational control over the construction project that is determinative of whether they are considered an “operator” under the permit.** In many cases, there will be two separate parties that have the necessary operational control over the project, and they will fall fairly distinctly into either one of the two types of parties described in the definition in Part I.B.1.a and I.B.1.b. In other cases, there will be one party that exercises both types of operational control over the project. MDE frequently finds that parties with the type of operational control over specific projects within the permit’s meaning of operator are involved in one or more of the following activities:

- Authorizing development/construction activities;
- Procuring project plans and specifications;
- Approving/disapproving project plans and specifications;
- Approving/disapproving project bids;
- Approving/disapproving SWPPPs, and SWPPP modifications;
- Issuing cease and desist orders of construction activities regardless if completed;
- Carrying out or managing construction work on the project site that causes earth disturbance.

This is not a comprehensive list of activities, MDE acknowledges that there are likely other similar decision-making activities not listed here that would be indicative of project specific operational control.