



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

This document is intended to help individuals, businesses, and governments in determining if they are a primary or a secondary operator under the Construction Storm Water General Permit (CGP). It also discusses who must submit a Notice of Intent (NOI) and an operator’s responsibility towards compliance with the CGP and the Storm Water Pollution Prevention Plan (SWP3).

The distinction between how primary and secondary operators obtain authorization under the CGP is only relevant at large construction sites; therefore this guide is meant for such 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 Sites

	Primary Operators	Secondary Operators
Authority	Primary operators can: <ul style="list-style-type: none"> • modify the construction plans and specifications • direct workers at the site in order to maintain compliance with the SWP3 	Secondary operators can: <ul style="list-style-type: none"> • approve or disapprove cost changes initiated by another permitted operator • hire or fire another operator <i>Secondary operators cannot initiate changes to the construction plans and specifications</i>
Obtaining Permit Coverage	<ul style="list-style-type: none"> • Complete and submit an NOI <ul style="list-style-type: none"> ◦ seven days prior to the start of construction if submitting a paper application ◦ prior to the start of construction if submitting an electronic application • Submit a copy of the NOI to the local MS4 Operator • Post a copy of the NOI at the site • Complete and post a copy of the primary-operator site notice at the site 	If there is no primary operator at the site, the secondary operator becomes the primary operator and follows the same guidance for obtaining permit coverage as a primary operator. <ul style="list-style-type: none"> • Complete and post a copy of the secondary operator site notice at the site • Submit a copy of the complete site notice to the local MS4 operator A secondary operator is not prohibited from submitting an NOI as a primary operator, allowing the operator more flexibility to direct work at the site as the project progresses.
Terminating Coverage	<ul style="list-style-type: none"> • Complete and submit a Notice of Termination (NOT) 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 NOT to the local MS4 operator • Remove the site notice posted at the construction site 	<ul style="list-style-type: none"> • Remove the site notice posted at the construction site • Complete the bottom portion of the site visit 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

Primary Operator

A primary operator is a person, business, or government associated with a construction activity who:

- has operational control over the construction plans and specifications or
- has day-to-day operational control over the activities at a site to the extent necessary to ensure compliance with the SWP3.

Secondary Operator

A secondary operator is a person, business, or government associated with a construction activity whose operational control is limited to:

- the employment of other operators or
- the ability to approve or disapprove changes to the construction plans and specifications.

Both primary and secondary operators, with respect to the SWP3, must ensure that:

- the SWP3 adequately addresses storm water 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
- any operators who may be affected by modifications in areas under their control are notified in a timely manner
- both primary and secondary operators may participate in a shared SWP3

Multiple operators at a single site share a single SWP3 only if it clearly indicates the name, authorization number, and responsibility of each operator.

Example 1

Q. Morningside Development Company 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 activities to the degree necessary to ensure compliance with storm water 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 specification have been turned over to the Moon River Construction, Happy Valley ISD will be unable to initiate additional changes or modifications to those plans. *In the event that 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.*