

Chapter 13 - Industrial and Construction Activity Operated by the Highway Agency

Provisions within the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991 temporarily exempted certain discharges from the need to obtain an industrial stormwater discharge permit under the Federal Clean Water Act. The exempted discharges included those associated with Phase I industrial activities at facilities owned or operated by Highway Agencies with populations of less than 100,000 (with the exception of powerplants, airports, and uncontrolled sanitary landfills). This “ISTEA” exemption was later extended by U.S. Environmental Protection Agency and Department regulations. The Department’s Phase II Rule further extended the deadline to apply for a permit for these previously exempted industrial activities to **March 3, 2004**.

It is important to note that the Highway Permit **does not** authorize the discharge of stormwater associated with industrial activity and that **a Highway Agency must apply for a separate NJPDES permit if the Highway Agency operates those types of facilities**. Types of facilities that a Highway Agency may operate and that are considered to be engaging in “industrial activity” include but are not limited to:

- certain landfills and recycling facilities;
- certain transportation facilities (including certain local passenger transit and air transportation facilities);
- certain facilities handling domestic sewage or sewage sludge (including certain Sewage Treatment Plants);
- steam electric power generating facilities; and
- construction activity that disturbs five acres or more

(See N.J.A.C. 7:14A-1.2 for the full definition of “stormwater discharge associated with industrial activity.”)

A Highway Agency must apply for a separate NJPDES permit if it operates any of these activities regardless of the size of the population of the Highway Agency in which they are located.

In addition, the Highway Permit **does not** authorize “stormwater discharge associated with small construction activity” as defined in N.J.A.C. 7:14A-1.2. In general, this is the discharge to surface water of stormwater from construction activity that disturbs at least one but less than five acres. Any Highway Agency that operates a construction site with such a discharge must apply for a separate NJPDES permit for that discharge. In most cases, this permit is the Department’s Construction Activity Stormwater General Permit (NJ0088323) obtained through the Soil Conservation District (or through NJDOT where NJDOT is the Highway Agency). This general permit is also used for construction activity that disturbs five acres or more.