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December 23, 2013

U.S. Environmental Protection Agency
Water Docket
Mail Code: 28221T
1200 Pennsylvania Avenue, NW
Washington, DC 20460

ATTN: Docket ID No. EPA–HQ– OW–2012–0803

Re: AGC Comments on the U.S. Environmental Protection Agency's Draft National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharges from Industrial Activities

Dear Sir or Madam:

The Associated General Contractors of America (AGC) is pleased to submit the following comments on the U.S. Environmental Protection Agency's (EPA) Draft National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharges from Industrial Activities (78 *Federal Register* 59672, September 27, 2013).

AGC remains the nation's leading construction trade association. Founded in 1918 at the request of President Woodrow Wilson, AGC represents nearly 30,000 firms, including general contractors, specialty-contracting firms, and service and supply providers. These members are associated with AGC through a nationwide network of chapters. They engage in the construction of commercial buildings, hospital and laboratories, schools, shopping centers, factories, warehouses, highways, bridges, tunnels, airports, levees, water works facilities and multi-family housing units, and they prepare sites and install the utilities necessary for housing developments. These important construction projects play a powerful role in sustaining economic growth, in addition to producing structures that add to productivity and the nation's quality of life.

AGC members are directly affected by regulatory decisions made by federal and state permitting authorities under the Clean Water Act (CWA). AGC members own and operate facilities located on or near waters of the United States. Many conduct operations that generate "stormwater associated with industrial activity" as defined at 40 CFR Part 122.26(b)(14) in areas where EPA serves as the NPDES permitting authority, and are subject to EPA's Multi-Sector General Permit (MSGP). In addition, AGC members operate in states that have been authorized to issue their own general permit for industrial stormwater but historically relied on EPA's MSGP as the "model" permit that informs the state's general permit.

While the MSGP may be limited in its geographic scope, it is very important because it serves as the model for most state permits and provides the most expedient explanation for EPA's "industrial stormwater permitting strategy." Even for states that claim otherwise, the MSGP is the single most important industrial stormwater permitting document nationally, and most states rely upon EPA's MSGP and accompanying fact sheet (MSGP Fact Sheet) explanations for determining the directions of their own authorized stormwater general permit programs. Hence, EPA should recognize the importance, nationally, for ensuring the MSGP is clearly-crafted and fully within the scope of the CWA.[1]

Executive Summary of Key Comments

In the comments that follow, AGC identifies the many situations in which a general construction contractor will be subject to both the MSGP and EPA's Construction General Permit (CGP). AGC also explains how and why these firms would be uniquely burdened by differences between the measures and standards that apply to active construction sites and the measures and standards that apply to industrial operations. AGC is particularly concerned that Part 2 of the draft permit would prohibit the discharge of vehicle and equipment washwater.

AGC also addresses EPA's proposal to limit discharges into a federal Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or Superfund) site, and the seemingly unfettered discretion that EPA would have to shut down a previously permitted industrial facility whenever the agency designated a new site as hazardous and determined that the facility discharges into that newly designated site. AGC's comments point out that the scope of the proposed limitations—and the conditions that must be met to qualify for permit coverage—are very unclear. The regulated community must be given fair and adequate notice of what is required to comply with the MSGP and, similarly, it must be able to rely upon coverage under the general permit for the permit's full five-year term.

AGC also raises significant and reasonable concerns regarding EPA's new proposed requirement for facilities to put their Stormwater Pollution Prevention Plan (SWPPP) documents on the internet. Such a requirement is impractical and would serve as a deterrent to any facility putting more into their SWPPP than the bare minimum requirements.

In addition, AGC raises issues and concerns with EPA's attempt to restrict the "Permit Shield" provisions of the Clean Water Act (Section 402(k)). In fact, EPA may be unnecessarily or unintentionally restricting the MSGP permit coverage for legitimate discharges of stormwater associated with industrial activity.

[1] *See* CWA Section 402(p)(2)(B), which requires NPDES permits for stormwater pollutant discharges "associated with industrial activity."

Important Relationship between EPA's MSGP and CGP

There are various situations in which a general contractor may be subject to the requirements of *both* EPA's MSGP and EPA's CGP. Recognizing that EPA's NPDES stormwater permits set the standard for general permits issued by authorized states, AGC members note that the terms and conditions of EPA's industrial and construction permit programs dictate how many general contractors must manage their stormwater runoff across the entire nation; not just in the states and territories where EPA administers the NPDES permit program. For this reason, AGC members are interested in, and affected by, the relationship between EPA's MSGP and EPA's CGP.

Specifically, many general contracting firms rely on coverage under EPA's MSGP, or a comparable state-issued general permit, to authorize the discharge of stormwater from their "industrial activities." For example, many construction companies operate "active" or "inactive" materials source sites—including quarries, borrow pits and sand/gravel pits, as well as their associated materials processing operations— that are *not* covered by a CGP. These companies must secure coverage under an industrial stormwater permit.[2] Similarly, construction companies that operate active mining, concrete- and asphalt-batching locations must be covered by an industrial stormwater permit if they are *not* covered by a CGP.[3]

For these same construction companies, coverage under a *separate* NPDES general permit—either EPA's CGP or a comparable state-issued one—also is required to authorize the discharge of stormwater from their "construction activities" that disturb one acre or more of land.

Also, EPA must consider situations where construction that disturbs greater than one acre (and triggers the need for CGP coverage) is taking place at an industrial property that is already covered by the MSGP, which results in "double-regulated" discharges. More specifically, construction firms are hired by the owner/operator of industrial operations (those facilities that fall within one of EPA's 29 "sectors" of industrial activity[4]) whenever there is a need to perform construction operations at the facility location (*e.g.*, upgrades, maintenance, expansion, etc.). Under this scenario, the construction firm is the permittee under the CGP and that firm is also bound by the terms and conditions of the MSGP, per its contractual relationship with the owner of the industrial site (*e.g.*, power plant).

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[2] *See e.g.*, "Memorandum: Applicability of 2008 MSGP to Gravel Pits Associated with Road and Bridge Construction and Maintenance" at http://www.epa.gov/npdes/pubs/msgp2008_sand&gravel.pdf.

[3] *See* EPA's CGP Part 1.3. Many general contractors operate off-site industrial facilities to support their construction activities (*e.g.*, concrete or asphalt batch plants, equipment staging yards, material storage areas, excavated material disposal areas, borrow areas) and stormwater discharges from these activities are not authorized under the CGP if the activity: is a commercial operation, (2) serves multiple unrelated projects or (3) will continue to operate after the permitted construction project is complete.

[4] *See* 40 CFR 122.26(b)(14)(i)-(ix), (xi).

Because of the many situations where a general contracting firm may be subject to the requirements of both EPA's MSGP and EPA's CGP, AGC members are uniquely burdened by inconsistencies in stormwater pollution prevention measures and standards applicable to active construction sites versus industrial operations (whether they be related to off-site operations or unrelated facilities at which construction occurs).

Limitations on Washwaters

To help construction companies implement and maintain effective pollution prevention measures to minimize equipment tracking of materials both at their construction sites and at their related industrial facilities, it is important for EPA's MSGP and CGP to be consistent and practical in how they address construction equipment washwater. AGC members are concerned that provisions in the 2013 draft MSGP would inhibit contractors from using wash stations to remove sediment from equipment before it leaves any site covered by the MSGP; however, this practice is often necessary as a practical means of meeting the requirements of EPA's CGP.

Specifically, the 2013 draft MSGP, Part 2.1.2.1, clearly states that "the discharge of vehicle and equipment washwater is not authorized by the permit." The 2013 draft MSGP also prohibits the discharge of washwaters that have "come into contact with oil and grease deposits … unless the deposits have been cleaned up using dry clean-up methods." This language would seem to prevent contractors from using wash stations to remove sediment from vehicles before they leave any site covered by the MSGP—unless they design completely self-contained water recycling systems to collect, store, treat and redeliver (or retain) the water, in each instance. AGC members report that this type of system is often impractical and cost-prohibitive out in the field (*i.e.*, at materials source sites and batching locations that are not eligible for coverage under a CGP) and inconsistent with the pollution prevention standards set forth under EPA's current CGP, as further explained below.

In addition, a prohibition against the discharge of vehicle and equipment washwater—without exception or qualification—would be counterproductive to meeting other sections of the 2013 draft MSGP. For example, the 2013 draft MSGP, Part 2.1.2.10 - Dust Generation and Vehicle Tracking of Industrial Materials, states: "You must minimize generation of dust and off-site tracking of raw, final, or waste materials." Another section of the 2013 draft MSGP, Part 3.1 - Routine Facility Inspections, states: "During the inspection you must examine or look out for … offsite tracking of industrial or waste materials, *or sediment* where vehicles enter or exit the site" (emphasis added). To meet above-referenced requirements, the draft MSGP Fact Sheet (page 34) cites the following measures as effective ways to reduce vehicle tracking of materials: "setting up a wash site or separate pad to clean vehicles prior to their leaving the site."

AGC also is concerned with the 2013 draft MSGP, Part 2.1.2.1 - Minimize Exposure, which would require permittees to perform all vehicle and/or equipment cleaning operations indoors, under cover or in bermed areas that prevent runoff and run-on and also that capture any

overspray. AGC members report that this type of system is impractical and cost-prohibitive out in the field (*i.e.*, at materials source sites and batching locations that are not eligible for coverage under a CGP and at industrial sites undergoing construction) and inconsistent with the pollution prevention standards set forth under EPA's current CGP, as further explained below.

As noted above, the 2013 draft MSGP's prohibition against "the discharge of vehicle and equipment washwater" is inconsistent with EPA's CGP, Part 1.3, which explicitly allows the discharge of "water used to wash vehicles and equipment" (absent soaps, solvents or detergents) provided applicable pollution prevention requirements are met. When vehicle washing, wheel washing and other types of washing activities occur on any jobsite or at any construction support activity area covered by the CGP, the permit requires the site operator to "provide an effective means of minimizing the discharge of pollutants." EPA has provided industry with examples of what constitutes an "effective means of minimizing the discharge" in its CGP and CGP Fact Sheet. Such examples include "locating activities away from surface waters and stormwater inlets or conveyances and directing wash waters to a sediment basin or sediment trap, using filtration devices, such as filter bags or sand filters, or using other similarly effective controls."[5]

The construction industry has become familiar with and accustomed to following the above-referenced pollution prevention requirements—specific to the washing of equipment and vehicles—as a necessary means to complying with the CGP and new federal regulations, the Construction and Development Effluent Limitations Guidelines (C&D ELG);[6] the latter being directly applicable nationwide. EPA's CGP *requires* site operators "to minimize track-out of sediment onto streets and other paved areas from vehicles exiting the construction site." To meet this requirement, EPA's CGP and CGP Fact Sheet direct contractors, as necessary, to "use additional controls (*e.g.*, wheel washing…) to remove sediment from vehicle tires prior to exit."[7] Again, EPA notes that these requirements are intended to implement the C&D ELG requirement to "minimize sediment discharges from the site," and NPDES-authorized states are following EPA's lead in incorporating the C&D ELG provisions into their own state general permits.

In summary, not only does EPA's CGP tell the regulated community how to handle vehicle and equipment washwater, it goes so far as to provide specific EPA-recommended examples. If these practices are followed on an MSGP permitted site, they would result in a violation. This conflict will be particularly confusing to facilities associated with cement or concrete manufacturing, asphalt paving, minerals mining or landfill operations that routinely support construction activities and are often owned/operated by construction companies. Similar, AGC members are concerned about how to handle equipment washwater when engaged in construction under the CGP on sites covered by the MSGP.

[5] *See* CGP Part 2.3.3.2 and CGP Fact Sheet page 84.
[6] *See* 40 CFR Part 450.
[7] *See* CGP Part 2.1.2.3 and CGP Fact Sheet pages 14 and 66.

Discharges to CERCLA (Superfund) Sites

Under EPA's 2013 draft MSGP, general permit coverage would not be available to operators of industrial sites that discharge stormwater "to a federal CERCLA Site … unless you notify your applicable EPA Regional Office in advance and the EPA Regional Office determines that you are eligible for permit coverage." Prospectively, the 2013 draft MSGP also would require EPA to reassess sites/facilities that already enjoy general permit coverage if "it is determined that your facility discharges to a CERCLA site … after you have obtained coverage under this permit."[8]

AGC members have raised several concerns with the CERCLA-related limitations on permit coverage. These include (1) the lack of clarity on what constitutes a CERCLA site, (2) the potential for EPA to withdrawal general permit coverage from a fully operational site and (3) the resulting loss of protection for "federally permitted releases" from CERCLA's strict joint-and-several liability scheme. Each of these concerns is explained in detail below.

First, AGC questions what constitutes a "CERCLA Site." It is unclear how members of the regulated community should determine now—and during the life of the MSGP—whether or not they are discharging stormwater to a "CERCLA Site" for the purpose of complying with the MSGP. Several times in the 2013 draft MSGP and draft MSGP Fact Sheet, EPA refers to "a federal CERCLA Site *as defined in Appendix A and referenced in Appendix P*…" (emphasis added).

Draft Appendix A defines a "CERCLA Site" as one "that is undergoing a remedial investigation and feasibility study, or for which a Record of Decision for remedial action has been issued…" However, buried in the draft MSGP Fact Sheet (page 12), EPA notes: "This definition includes sites that have been listed on the National Priorities List … or that are being addressed using CERCLA authority." EPA generally updates its National Priorities List (NPL) at least annually. As of Oct. 31, 2013, EPA has 1,313 sites on the NPL and there are currently another 54 sites that EPA has proposed for the NPL.[9] It stands to reason that dozens of new sites may be added to the NPL during the MSGP's five-year permit term.

Draft Appendix P purports to be a "List of Federal CERCLA Sites," but upon closer examination, the list is restricted to sites in EPA Region 10 only; it does not include the NPL sites for the states and territories outside of that region and where EPA remains the NPDES permitting authority: Massachusetts (31 NPL sites), New Hampshire (20 NPL sites) and New Mexico (14 NPL sites) or the District of Columbia (1 NPL site), for example.[10] To make matters more confusing, draft Appendix P states: "The areas where the permit applies are in Part C of the permit. For an up to date list and maps of CERCLA sites in Region 10, please check the Region 10 Superfund list viewable at http://yosemite.epa.gov/R10/cleanup.nsf/sites/cleanuplist."

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[8] *See* 2013 Draft MSGP Section 1.1.
[9] *See* EPA's website at http://www.epa.gov/superfund/sites/npl/status.htm.
[10] *See* EPA's website at http://www.epa.gov/superfund/sites/npl/status.htm and http://www.epa.gov/superfund/sites/query/queryhtm/nplfin.htm.

In trying to make sense of why Appendix P omits nearly 100 current NPL sites within EPA's jurisdiction and why it points to Region 10 for the most up-to-date list of CERCLA sites, AGC took note of one sentence in Appendix G – NOI Instruction Form: "Refer to the list of federal CERCLA sites *that include a waterbody cleanup* are provided in Appendix P of the permit" (emphasis added).

For purposes of the 2013 draft MSGP, it is very unclear what EPA actually means when it refers to a "CERCLA Site." Despite the definition provided it Appendix A, upon further analysis of the 2013 draft MSGP (particularly Appendix P), it appears that what EPA actually means by "CERCLA Site" is a site that meets the following three criteria: (1) that are on the NPL at any time during the life of the permit, (2) that are located within an area where EPA remains the NPDES permitting authority and (3) that include a waterbody cleanup. But even if this were EPA's intention, it would be unduly burdensome for the regulated community to identify such sites.

Second, AGC is concerned that EPA will use the proposed CERCLA-eligibility provision *after* a company has relied on a duly issued permit. AGC objects to an open-ended eligibility requirement: namely, one that would reserve for EPA the right to shut down any site that is already operating under EPA's MSGP, if the agency later determines that the site/facility is discharging stormwater to a newly listed CERCLA site (*i.e.*, a site that was put on the NPL after EPA published its final MSGP).

Placing the certainty of uninterrupted permit coverage on conditions for which the permittee has no control will place permittees in the untenable position of not being able to rely on their NPDES permit as a means for measuring their Clean Water Act compliance. The draft permit states that EPA would need to "ensure that your discharges will not lead to recontamination of aquatic media at the CERCLA Site"; however, no information is provided on how this determination will be reached or how long it will take. Further, it is easy to foresee opponents of specific projects bringing citizens suits to compel the EPA to find that discharges will lead to recontamination of aquatic media, mostly likely seeking preliminary injunctions against continued construction while their information is considered. Any lapse in permit coverage would certainly impact the necessary effort to repair, replace and upgrade public infrastructure.

Third, if a site were to lose its permit coverage, it would also lose any and all protection under CERCLA Section 107, which exempts from CERCLA liability any "response costs or damage resulting from a federally permitted release." CERCLA Section 101(10)(A) defines a "federally permitted release" as including discharges "in compliance with" a permit issued under the NPDES program in CWA Section 402.

A June 2010 federal district court decision brought to the forefront the threat of CERCLA or "Superfund" liability for public and private parties that design and operate stormwater drainage systems to discharge highway runoff to the environment. The U.S. District Court for the Western District of Washington handed down a decision in *United States v. Washington State*

Department of Transportation (WSDOT)[11] that is forcing the state agency to reimburse the United States for almost $9.36 million in clean-up and related costs because the state's highways emptied untreated, polluted stormwater into Tacoma's Thea Foss Waterway/Commencement Bay—which is now a listed Superfund site. AGC has been monitoring the impact of this court case on contractors engaged in design-build projects. WSDOT argued that it qualified for CERCLA's "federally-permitted release exemption"—arguing that it had operated the stormwater drainage system under a state-issued NPDES permit since 1995, in addition to a municipal stormwater permit, and that any discharges from the stormwater system complied with the CWA. In a follow-up decision on the same case from spring 2011, the court decided that WSDOT was only liable for the discharges made before the NPDES permit was issued; however, the impossibility of dividing which discharges were made pre-permit and post-permit ultimately resulted in liability for all of it.

This case opened up the possibility that anyone who designs, builds or operates stormwater drainage systems is at a risk for liability, even if they did not personally release any hazardous substance. AGC has educated construction professionals that design and build stormwater systems in the vicinity of aquatic Superfund sites to ensure that their activities are in compliance with federal permitting schemes and to take steps designed to prevent and/or limit hazardous substances from entering their stormwater systems. However, working within NPDES discharge permits may limit liability only for actions taken under the permit. By not being able to reasonably divide pre- and post-permit discharges, if any discharge occurs without NPDES discharge permit coverage it would render the "federally-permitted release" exemption to CERCLA nearly useless.

Stormwater Pollution Prevention Plan (SWPPP) Provisions

The proposed language in Section 5.4 requires that that the permittee's current SWPPP or extensive information from the current SWPPP must be made available to the public by: (1) posting the SWPPP on a publically accessible website and providing the URL (or web address) in the NOI; or (2) providing detailed SWPPP information directly in the NOI.

The first option is problematic because maintaining a website version of the SWPPP for every minor modification that is made to the master SWPPP presents an undue burden and significant risk of technical non-compliance with the permit for even the most minor oversight. SWPPPs include site plans and maps, which vary in paper size from 11x17 to those that could fill a drafting table. *See* Figure 1 for a representative site map. What is more, EPA consistently states in its SWPPP guidance documents and templates that a "SWPPP is a 'living' document and is required to be modified and updated, as necessary, in response to corrective actions," among other things.[12] Accordingly, every time a company would make anticipated changes to its

[11] *See* http://news.agc.org/wp-content/uploads/2012/05/US-v-Wash-DOT-case.pdf.
[12] *See e.g.*, "EPA's Sample MSGP SWPPP Template" at http://cfpub.epa.gov/npdes/stormwater/msgp.cfm#msgp2008_swppp.

SWPPP, it would need to rescan the entire document. AGC is unaware of any software that would allow the permittee to modify just one page of a document that is already posted online. AGC members also point out that every time the document is modified (and re-uploaded), the URL would change and not match what was listed on the NOI.

The second option for providing detailed SWPPP information directly in the NOI, in lieu of posting the SWPPP on the internet, is overly-broad and excessive.[13] Providing preliminary, limited SWPPP information is fundamentally more feasible, but a general description of industrial processes, potential pollutants and types of structural and non-structural best management practices (BMPs) to be used (at the time the NOI is filed) is all that EPA should require.

Public Access to SWPPP Data

EPA has not documented any public need to review site-specific SWPPPs, or how the public gains any useful knowledge about the specific BMPs and processes employed by an industrial facility. Not only the well-motivated but also anyone at odds with any of these entities, for any business, political or other reason could easily access and make extensive use of the central databases that the agency plans to make available. The ready availability of this information would not only empower communities to play more active roles but also empower businesses to search for their competitions' propriety or otherwise confidential information. The system would completely circumvent the Freedom of Information Act, and the limitations that it expressly imposes on the disclosure of government records.

AGC also has a great concern that competitors or disgruntled employees, or perhaps others, might misuse the data to inflict reputational harm on the regulated entities. There would be nothing to prevent the data from being misconstrued, taken out of context, or simply misunderstood.

[13] *See* MSGP Section 7.3. The information from the SWPPP that would have to be included in the applicant's NOI form includes: onsite industrial activities exposed to stormwater, including potential spill and leak areas (see Parts 5.2.3.1, 5.2.3.3 and 5.2.3.5); pollutants or pollutant constituents associated with each industrial activity exposed to stormwater that could be discharged in stormwater and/or any authorized non-stormwater discharges listed in Part 1.1.3 (see Part 5.1.3.2); stormwater control measures employed to comply with the non-numeric technology-based effluent limits required in Part 2.1.2 and Part 8, and any other measures taken to comply with the requirements in Part 2.2 Water Quality -Based Effluent Limitations (see Part 5.2.4.1); and a description of control measures employed to comply with the non-numeric technology-based effluent limits required in Part 2.1.2, and any other measures taken to comply with the requirements in Part 2.2.

In our experience, the primary reason that certain groups have requested SWPPPs is to threaten citizen suits under the CWA for trivial paperwork or other inconsequential inconsistencies relating to how a facility describes versus implements a BMP. Absent a compelling environmental benefit associated with complete public disclosure of SWPPPs, EPA should delete this mandate. Complete public disclosure also is a deterrent to more comprehensive SWPPP development because of fear of increased liability or providing additional information to competitors will necessitate that SWPPPs only meet the bare minimum requirements. Consultants that rely upon selling their SWPPP services also will be impacted when facilities merely copy online SWPPPs for their own use.

Section 5.5 sets forth additional documentation that is required to be kept with the facility's SWPPP. If EPA is asserting that such other documents are a part of the SWPPP and must also be publicly available via the internet, then AGC strongly objects to this mandate. The 2013 draft MSGP and draft MSGP Fact Sheet language requires appropriate clarification.

Permit Shield Provision

For the first time in an MSGP, EPA has attempted to define the applicability of the "permit shield" provision of the CWA Section 402(k) to the general permit.[14] Specifically, EPA sets forth that:

> *Any discharges not expressly authorized under this permit are not within the scope of the pollutants authorized. Such discharges are not covered by this permit or the permit shield provision of the CWA Section 402(k) and they cannot become authorized or shielded by disclosure to EPA and/or state via the Notice of Intent (NOI) to be covered by the permit or by any other means (e.g., in the Stormwater Pollution Prevention Plan (SWPPP) or during an inspection).*

On its face, AGC recognizes that EPA does not want to create opportunities for facilities to obtain NPDES permit coverage for discharges that the agency has not contemplated should be covered under the MSGP. AGC accepts that premise. However, in its implementation, it creates for EPA a situation in which it must anticipate every possible discharge covered by this general permit at vastly different types of sites across significantly different industries/operations. And yet, there are many "gray areas" that do not lend themselves neatly to black and white line drawing. Section 1.1.4.1 raises the kinds of concerns that result from this effort. Specifically, EPA concludes that:

> *Stormwater discharges that are mixed with non-stormwater, other than those non-stormwater discharges listed in Part 1.1.3, are not eligible for coverage under this permit.*

[14] *See* the 2013 Draft MSGP Section 1.1.4 and repeated in Section 5.

This requirement could be interpreted such that any mixing of industrial stormwater with any non-stormwater not otherwise listed in the permit removes or somehow vitiates the coverage for the permitted industrial stormwater discharge in that combined discharge. In other words, not only is the non-stormwater portion not covered by the MSGP (logical solution), but the implication is that the MSGP-covered part of that combined discharge somehow also loses its MSGP protection (illogical solution). The draft MSGP Fact Sheet implies that the former is EPA's intent (to force alternative permit coverage of the otherwise unpermitted non-stormwater), but EPA's true intent is not explained with sufficient precision.

Both the permit language and the draft MSGP Fact Sheet need more clarity and EPA should proceed cautiously if it attempts to clarify the applicability of the permit shield in the final MSGP to ensure that it is not creating unwarranted and unfair unintended consequences. The permit shield provision of the CWA plays an important role in the NPDES permitting scheme and should not be applied in a more restrictive manner within this general permitting setting than in any other NPDES permit.

Conclusion

AGC appreciates the opportunity to comment. Thank you for taking our concerns into account. If you have any questions, please contact me at pilconisl@agc.org or (703) 837-5332.

Sincerely,

Leah F. Pilconis
Senior Environmental Advisor to AGC of America

Figure 1. Photographic demonstration of a “facility” site map that is part of a SWPPP.