



## DISCUSSION DOCUMENT

### U.S. EPA's DRAFT 2017 CONSTRUCTION GENERAL PERMIT

#### *Proposed Permit Changes & Provisions on which EPA Solicits Feedback*

U.S. EPA is proposing for public comment the draft 2017 National Pollutant Discharge Elimination System (NPDES) Construction General Permit (CGP) – [click here](#). EPA is accepting public comment on the draft permit until May 26, 2016.

AGC is already preparing its response to EPA on behalf of the construction industry. The Association welcomes members' input on the host of possible revisions to the federal CGP that would go well beyond what is currently required, per the 2012 CGP, as summarized below. **Please email Leah Pilconis, senior environmental advisor to AGC, at [pilconisl@agc.org](mailto:pilconisl@agc.org) by May 6 so AGC can meet EPA's short 45-day comment deadline.**

- 1. Expanded and Transparent (Online) NOI Reporting**—EPA proposes to require a new question on the NOI form asking for the type of construction activities that will occur on the site. *Draft Appendix J. ALSO NOTE* – Per EPA's 2015 [NPDES Electronic Reporting Final Rule](#), the final 2017 CGP will require construction site “operators” to use EPA's NPDES eReporting Tool (NeT) to electronically prepare and submit NOIs for coverage under the 2017 CGP, unless a waiver is granted by the applicable EPA Regional Office. This is the first CGP that will use NeT, which will replace the previous eNOI system required under the 2012 CGP. To modify an NOI, the operator may submit a “Change NOI” form using NeT. **EPA plans to make information on the CGP NOI form available to, and searchable by, the public** through the [EPA Enforcement and Compliance History Online \(ECHO\) database](#). [Likewise, the final 2017 CGP will require permittees to electronically prepare and submit NOTs using the NeT system, unless the EPA Regional Office grants approval to use a paper form.]
- 2. Public Accessibility (Online) of Stormwater Pollution Prevention Plan (SWPPP) Information**—Request for comment (no draft language provided) on requiring operators to make each jobsite SWPPP, or a portion of the SWPPP, publicly available. EPA has asked for input on the specific components of the initial SWPPP that would be of greatest interest or utility to stakeholders, such as maintenance schedules, a description of construction activities, or expected pollutants. *Part 7.3.*

**For the 2017 CGP, EPA is considering requiring operators to make their initial SWPPPs publicly available by either posting them online on a website or submitting them to EPA. Confidential Business Information (CBI) would be withheld from the public, but may not be withheld from EPA, the U.S. Fish and Wildlife Service (USFWS) or the National Marine Fisheries Service (NMFS). For example, EPA could require the entire initial SWPPP, or a portion of the initial SWPPP or a URL, to be included as part of the NOI form submission (see #1 above), which EPA could make publicly available through the EPA Enforcement and Compliance History Online (ECHO) database. (A similar requirement was included in the recently reissued 2015 Multi-Sector General Permit (MSGP) for stormwater discharges associated with industrial activities.) EPA requests comment on the utility and feasibility of making the initial SWPPP publicly available under the CGP.**

According to EPA, “[e]nhanced transparency and availability of CGP SWPPP information will provide stakeholders with more timely and complete information about potential sources of water pollution and measures to control discharges for the sites covered under the CGP, and will help EPA to ensure that SWPPPs are meaningfully developed and implemented.”

Note that under the 2012 CGP, permittees are required to provide copies of the SWPPP, upon request, to only: EPA; a state/tribal/local agency approving stormwater management plans; the operator of a storm sewer system receiving discharges from the site; or representatives of USFWS or NMFS. Under the 2012 CGP, EPA provides access to portions of the SWPPP to a member of the public upon request.

**3. Allocation of SWPPP Responsibilities**—EPA proposes draft footnote language that may help to better clarify, as well as allocate, responsibilities for compliance with the CGP terms/conditions between the owner and the contractor – particularly where there are multiple “operators” associated with the same site. *Part 1.1.1*. See also #4 below regarding a “Group SWPPP.”

“Footnote #1: Where there are multiple operators associated with the same site, all operators are required to obtain permit coverage. The following applies in these situations:

1. Operators may divide responsibility for compliance with the terms of this permit provided that each Stormwater Pollution Prevention Plan (SWPPP), or a group SWPPP, documents which operator has responsibility for each requirement of the permit. However, the sharing of responsibilities for complying with the terms of the permit does not waive an individual operator’s liability should another operator fail to implement any measures that are necessary for that individual operator to comply with the permit. In addition, where responsibilities are shared, all operators must ensure, either directly or through coordination with other operators, that their activities do not render any other operators’ controls and/or any shared controls ineffective. Thus, each individual operator is liable for compliance with all applicable requirements of the permit, including the installation and maintenance of any shared controls, regardless of how permit responsibilities are allocated among multiple operators.
2. If any individual operator develops a separate SWPPP, that operator remains responsible for compliance with all effluent limits, terms, and conditions of this permit that apply to discharges of stormwater from the operator’s site, including requirements that apply to any shared controls relied upon by the operator.
3. If the operator of a “construction support activity” (see Part 1.2.1c) is different than the operator of the main site, that operator is also required to obtain permit coverage.”

According to EPA, for projects with multiple operators, the new language above would clarify (within the text of the actual permit) EPA’s longstanding requirement that all operators are “joint and severally liable” for compliance with the permit. For example, as EPA explains in the accompanying draft 2017 CGP Fact Sheet, if multiple operators on the same site develop a group SWPPP that divides responsibilities, an individual operator’s liability is not waived should another operator fail to uphold its responsibility(ies) and violate the terms of the permit. Additionally, if an individual operator chooses to develop a separate SWPPP, that individual operator is still responsible for compliance with the entire permit even if it relies upon shared controls.

**4. Group SWPPP for Sites with Multiple “Operators”**—Request for comment (no draft language provided) on a possible new permit provision that would require a group SWPPP for construction sites with multiple operators, in order to document in one place how the permit responsibilities will be divided among the permitted parties.

5. **More Frequent Site Inspections**—Request for comment on tightening the minimum site inspection frequency and, more generally, on the appropriate inspection frequency for all sites. **Snowmelt discharge inspection frequency**—Request for comment on the frequency of inspections that EPA should require for discharge events with snowmelt runoff. *Part 4.2.2.*

EPA is requesting comment in the proposed permit on whether more stringent inspection requirements should apply to all sites. Specifically, the proposal seeks comment on whether to require site inspections at least every 7 calendar days during construction, and within 24 hours of any storm with at least 0.25 inches of rainfall. Currently those requirements only apply to sites discharging to “sensitive waters,” including impaired waterbodies and those designated as high-priority in a state’s CWA antidegradation program.

6. **Tighter Land Stabilization Deadlines**—Request for comment on tightening the deadline to complete stabilization to seven (7) calendar days for all sites. *Part 2.2.14.*

EPA is requesting comment in the proposed permit on whether to modify the deadline to complete stabilization from 14 calendar days to 7 calendar days after stabilization has been initiated (*this would apply on all sites -- except for sites in arid, semi-arid, and drought-stricken areas and for permittees affected by circumstances beyond their control*) in order to ensure discharges meet water quality standards. Under the current 2012 CGP, sites discharging to sensitive waters (i.e., impaired waters and Tier 2, 2.5, or 3 waters) are required to complete stabilization within a 7-day timeframe.

7. **Temporary Stabilization of “Inactive” Stockpiles and Land Clearing Debris Piles**—EPA proposes a new requirement to cover or provide appropriate temporary stabilization for all inactive stockpiles and land clearing debris piles. “Inactive” piles are those that remain unused for 14 or more days. The current 2012 CGP requires that cover or appropriate temporary stabilization be provided for any stockpiles “where practicable.” *Part 2.2.5.*

8. **Additional Controls for Dewatering Activities**—Request for comment (no draft language provided) on additional controls or requirements EPA should consider to ensure that discharges of pollutants in construction dewatering discharges are minimized. *Part 2.4.*

9. **Restrictions on Runoff during Building Washdown**—EPA proposes a new requirement that “authorized” non-stormwater discharges of external building washdown waters must not contain hazardous substances, such as paint or caulk containing polychlorinated biphenyls (PCBs). (In other words, the proposed CGP would completely ban the discharge of haz substances in the process of an external building washdown.) EPA currently authorizes several nonstormwater discharges associated with construction activity under the 2012 CGP. *Part 1.2.2.*

EPA requests feedback on how frequently external building washdown activities are conducted by permittees covered under the CGP, and how frequently such discharges contain hazardous substances (e.g., paint or caulk containing PCBs). It is EPA’s expectation that very few sites will be conducting external building washdown activities under the CGP, and that of the few permittees that will conduct these activities, most of the resulting discharges will not contain hazardous substances. EPA also expects

that many permittees needing to conduct external building washdown activities can do so without discharging into a waterbody, e.g., by directing washwater flow into a pervious or vegetated area for infiltration. Thus, EPA assumes that any increase in burden associated with the proposed new condition will be minimal.

- 10. Stricter controls on demolition of buildings made with PCBs**—EPA proposes a new requirement to implement controls to minimize the exposure of polychlorinated biphenyl-(PCB) containing building materials to precipitation and stormwater associated with the demolition of structures with at least 10,000 square feet of floor space built or renovated before January 1, 1980. In addition, EPA proposes to require information about the demolition location and associated pollutants to be documented in the SWPPP. *Part 2.3.3.*
  
- 11. Protection for Construction and Domestic Waste Containers** – EPA proposes a new requirement that waste container lids be kept closed when not in use. For waste containers that do not have lids and could leak, EPA proposes to require that a cover (or a similarly effective means) be provided to minimize the discharge of pollutants. *Part 2.3.3.*
  
- 12. Added BMP Provisions**—EPA proposes to make revisions to the technology-based (non-numeric) effluent limits in the permit to implement the March 6, 2014, amendments to the Construction and Development Effluent Guidelines and Standards ([the C&D ELG rule](#)) at 40 CFR Part 450 (i.e., clarifying and enhancing requirements to control erosion caused by discharges, providing additional details on areas where buffers are required, and expanding on requirements for soil stabilization, preservation of topsoil, and certain pollution prevention measures).  
  
In the draft documents, EPA refers to the above-referenced revisions as “minor” but, in fact, some may warrant further analysis and feedback by industry – particularly on whether or not the proposed practices (i.e., EPA’s approach to incorporating the ELG rule into the federal permit) are feasible or cost-effective on a typical jobsite. EPA’s draft 2017 CGP Fact Sheet includes a summary of each ELG provision and the Agency’s rationale for how it has “articulated” the provision in the draft permit.
  
- 13. Public notice of permit coverage**—EPA proposes a new requirement that the permittee’s sign/posting (or other public notice) of permit coverage must also include information informing the public on how to contact EPA if stormwater pollution is observed in the discharge. The current 2012 CGP requires that the permittee post a sign or other public notice of permit coverage at a safe, publicly-accessible location in close proximity to the construction site. *Part 1.5.*

Leah F. Pilconis 

*Consultant on Environmental Law & Policy*

*Senior Environmental Advisor to AGC of America*

The Associated General Contractors of America | 2300 Wilson Blvd., Suite 300 | Arlington, VA 22201

Phone: 703.837.5332 E-Mail: [pilconisl@agc.org](mailto:pilconisl@agc.org) Website: [www.agc.org/environment](http://www.agc.org/environment)

*Twitter: @AGCEnvironment*

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