EPA's Proposed 2022 Construction General Permit

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  - You can send technical issues and questions to: Zachary.Armand@erg.com.
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  - In order to minimize background noise, currently all attendees in this meeting are on mute.

Before We Get Started

Language in this presentation is not the official proposal of the EPA. We have attempted to be accurate as to the contents of the proposed permit. To the extent there are differences between the language in this presentation and the proposed permit, the permit is what governs.

Abbreviations that will be used

- **CGP** – EPA's Construction General Permit
- **SWPPP** – Stormwater Pollution Prevention Plan
- **NOI** – Notice of Intent
- **NOT** – Notice of Termination

Things to Keep in Mind

1. This presentation is focused on the new or clarified requirements in the proposed CGP

2. Proposed CGP requirements were informed by discussions with states, developers, and environmental groups, and EPA inspectors, scientists, and permit writers

3. The bulk of the current CGP requirements will remain the same, most proposed changes clarify or add detail to existing provisions

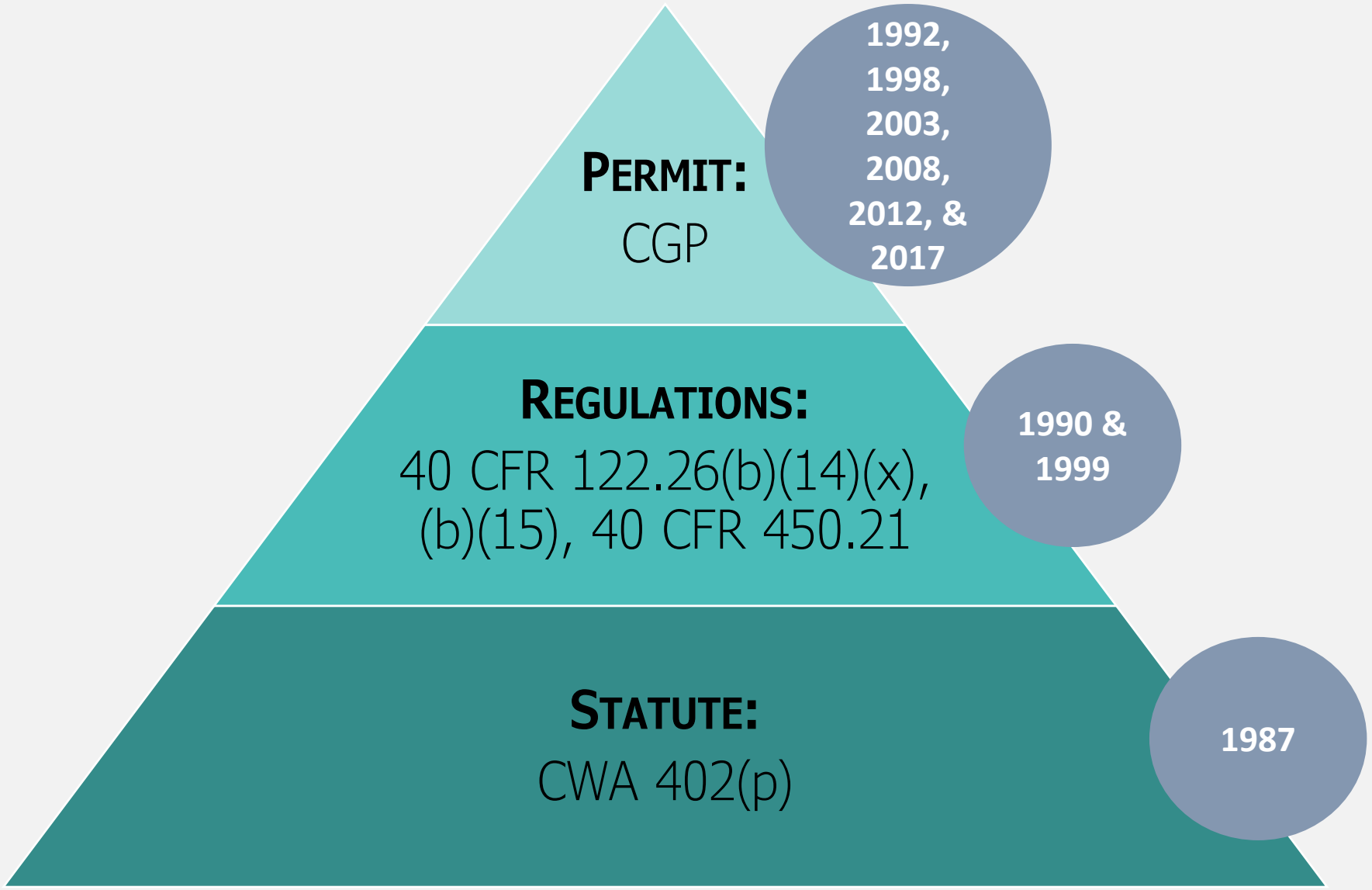
4. Consider providing feedback on the proposed CGP during the comment period

What's ahead

- CGP Background
- Reviewing and commenting on proposed permit
- Summary of significant changes
- Requests for comment
- Q&A

CGP Background

How does EPA regulate Construction stormwater discharges?



What Is Regulated?

A Clean Water Act permit is required for stormwater discharges from any construction activity disturbing:

- 1 acre or more of land, or
- Less than 1 acre of land, but that is part of a common plan of development or sale that will ultimately disturb 1 or more acres of land.

Construction activity includes earth-disturbing activities such as clearing, grading, and excavating land and other construction-related activities that could generate pollutants.

Federal Standards for Construction & Development Sites

The Federal "C&D Rule" Requirements

All Clean Water Act permits for construction stormwater must address the minimum federal effluent limitation guidelines for the construction and development point source category (referred to as "the C&D rule").

The C&D rule found in **40 CFR 450.21** establishes minimum effluent limitations :

1. Design, install, and maintain effective erosion and sediment controls, and pollution prevention measures, to minimize the discharge of pollutants;

2. Initiate stabilization of disturbed areas immediately whenever earth disturbing activities have ceased and will not resume for a period exceeding 14 calendar days;

3. Prohibit the discharge of dewatering water unless managed by appropriate controls;

4. Prohibit the discharge of:
   - Wastewater from concrete washout (unless managed by appropriate control), or washout/cleanout of stucco, paint, form release oils, other wastewater materials;
   - Fuels, oils, or other pollutants used for vehicles; and
   - Soaps or solvents to wash vehicles and equipment.

5. For basins and impoundments, utilize outlet structures that withdraw water from the surface, unless infeasible.

PREPARE

- Meet Eligibility Conditions
- Develop SWPPP

GET COVERED

- Submit NOI
- Receive Coverage

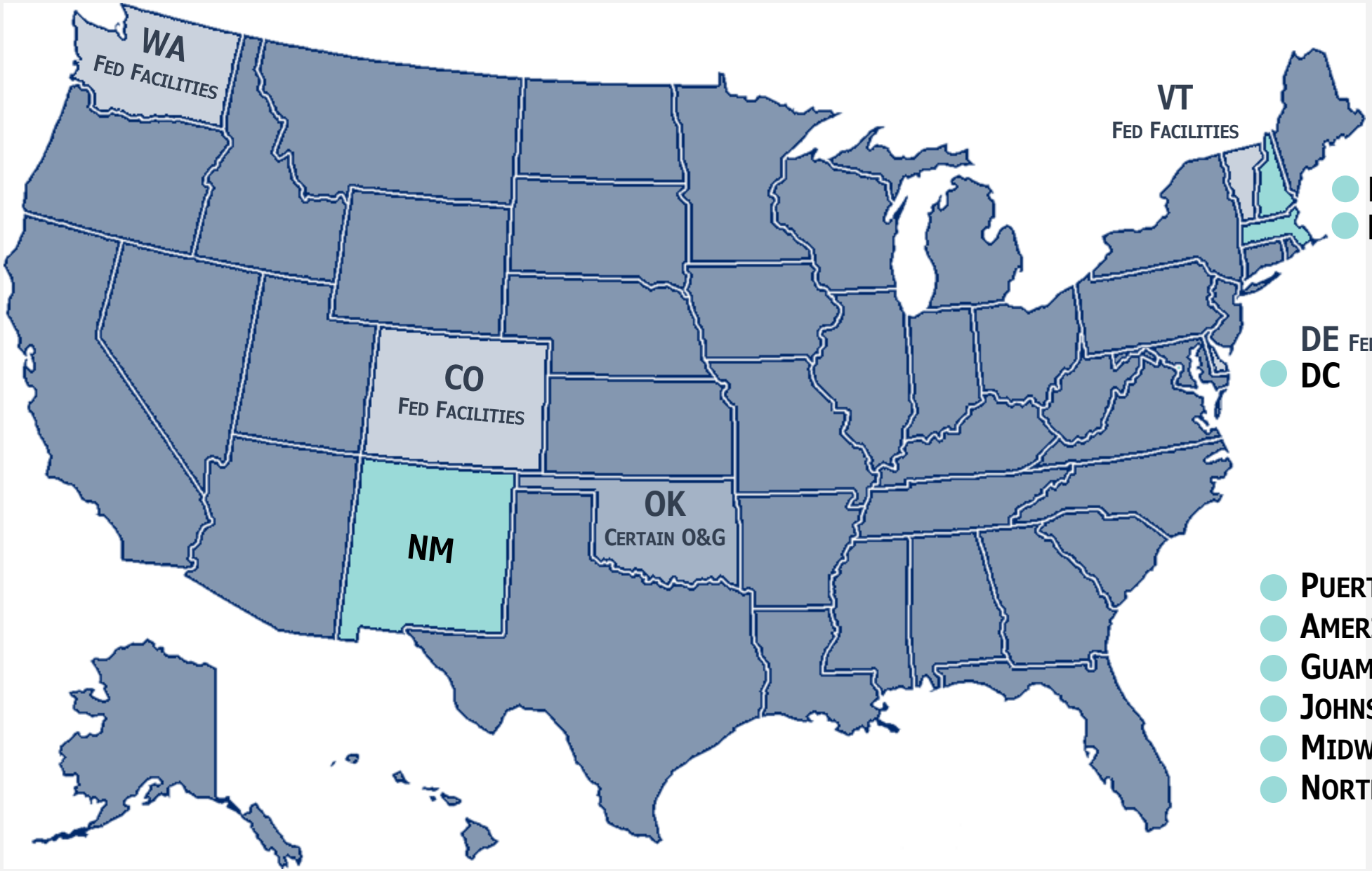
TAKE ACTION

- Install Stormwater Controls
- Conduct Inspections / Take Corrective Actions
- Complete Documentation

STABILIZE

- Stabilize Site Within 14 Days of Stopping Construction
- Submit NOT to Terminate CGP Coverage

Where does EPA's CGP apply?



- NH
- MA

- DE Fed Facilities
- DC

- Puerto Rico
- American Samoa
- Guam
- Johnston Atoll
- Midway Island & Wake Island
- Northern Mariana Islands

Reviewing and Commenting on Proposed Permit

Proposed 2022 CGP Published on May 12, 2021

Proposed CGP, Fact Sheet …

www.epa.gov/npdes/proposed-2022-construction-general-permit-cgp-and-related-documents

60-day comment period

Comments due: July 12, 2021

Submit comments through the docket

www.regulations.gov/docket/EPA-HQ-OW-2021-0169

Review of Permit

c. Personnel who are responsible for conducting inspections as required in Part 4.1; and

d. Personnel who are responsible for taking corrective actions as required in Part 5.

Members of the stormwater team must be identified in the SWPPP pursuant to Part 7.2.2.

6.2 GENERAL TRAINING REQUIREMENTS FOR STORMWATER TEAM MEMBERS

Prior to the commencement of construction activities, you must ensure that ~~the following personnel~~ all persons[545] ~~an~~ assigned to the stormwater team understand the requirements of this permit and their specific responsibilities with respect to those requirements, including the following related to the scope of their job duties:

a. The permit deadlines associated with installation, maintenance, removal of stormwater controls and stabilization;

b. The location of all stormwater controls on the site required by this permit and how they are to be maintained;

c. The proper procedures to follow with respect to the permit's pollution prevention requirements; and

d. When and how to conduct inspections, record applicable findings, and take corrective actions. Specific training requirements for persons conducting site inspections are included in Part 6.3.

~~a. Personnel who are responsible for the design, installation, maintenance, and/or repair of stormwater controls (including pollution prevention controls);~~

~~b. Personnel responsible for the application and storage of treatment chemicals (if applicable);~~

~~c. Personnel who are responsible for conducting inspections as required in Part 4.1; and~~

~~d. Personnel who are responsible for taking corrective actions as required in Part 5.~~

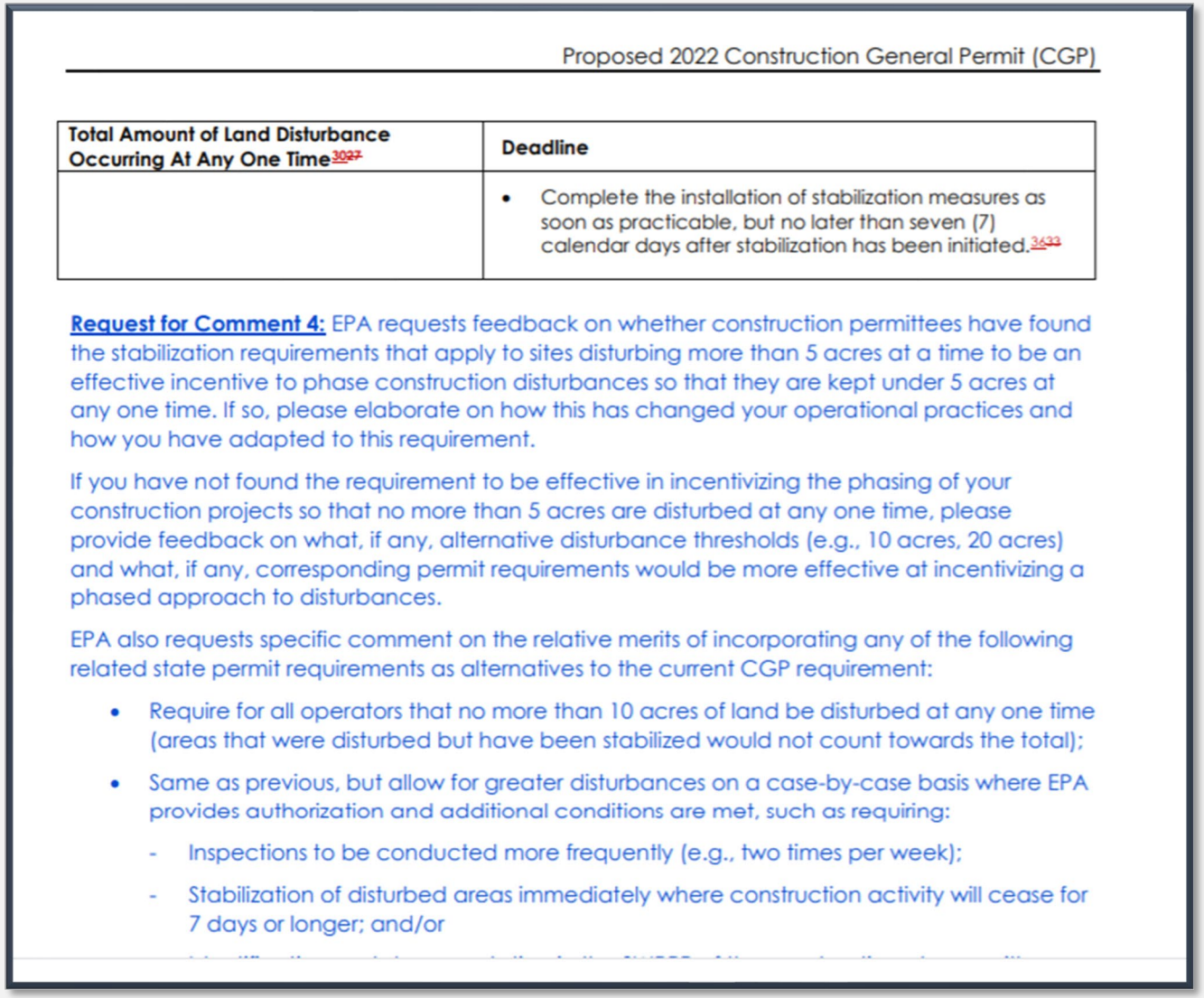
You are responsible for ensuring that all activities on the site comply with the requirements of this permit. You are not required to provide or document formal training for subcontractors or other outside service providers (unless the subcontractors or outside service providers are responsible for conducting the inspections required in Part 4, in which case you must provide such documentation consistent with Part 7.2.2), but you must ensure that such personnel understand any requirements of this permit that may be affected by the work they are subcontracted to perform.

All proposed text modifications shown in red font

Permit text that will be retained shown in black text

Same format used for permit appendices (Definitions, NOI, NOT)

Review of Permit



Proposed 2022 Construction General Permit (CGP)

Total Amount of Land Disturbance Occurring At Any One Time[3027]	Deadline
	• Complete the installation of stabilization measures as soon as practicable, but no later than seven (7) calendar days after stabilization has been initiated.[3633]

Request for Comment 4: EPA requests feedback on whether construction permittees have found the stabilization requirements that apply to sites disturbing more than 5 acres at a time to be an effective incentive to phase construction disturbances so that they are kept under 5 acres at any one time. If so, please elaborate on how this has changed your operational practices and how you have adapted to this requirement.

If you have not found the requirement to be effective in incentivizing the phasing of your construction projects so that no more than 5 acres are disturbed at any one time, please provide feedback on what, if any, alternative disturbance thresholds (e.g., 10 acres, 20 acres) and what, if any, corresponding permit requirements would be more effective at incentivizing a phased approach to disturbances.

EPA also requests specific comment on the relative merits of incorporating any of the following related state permit requirements as alternatives to the current CGP requirement:

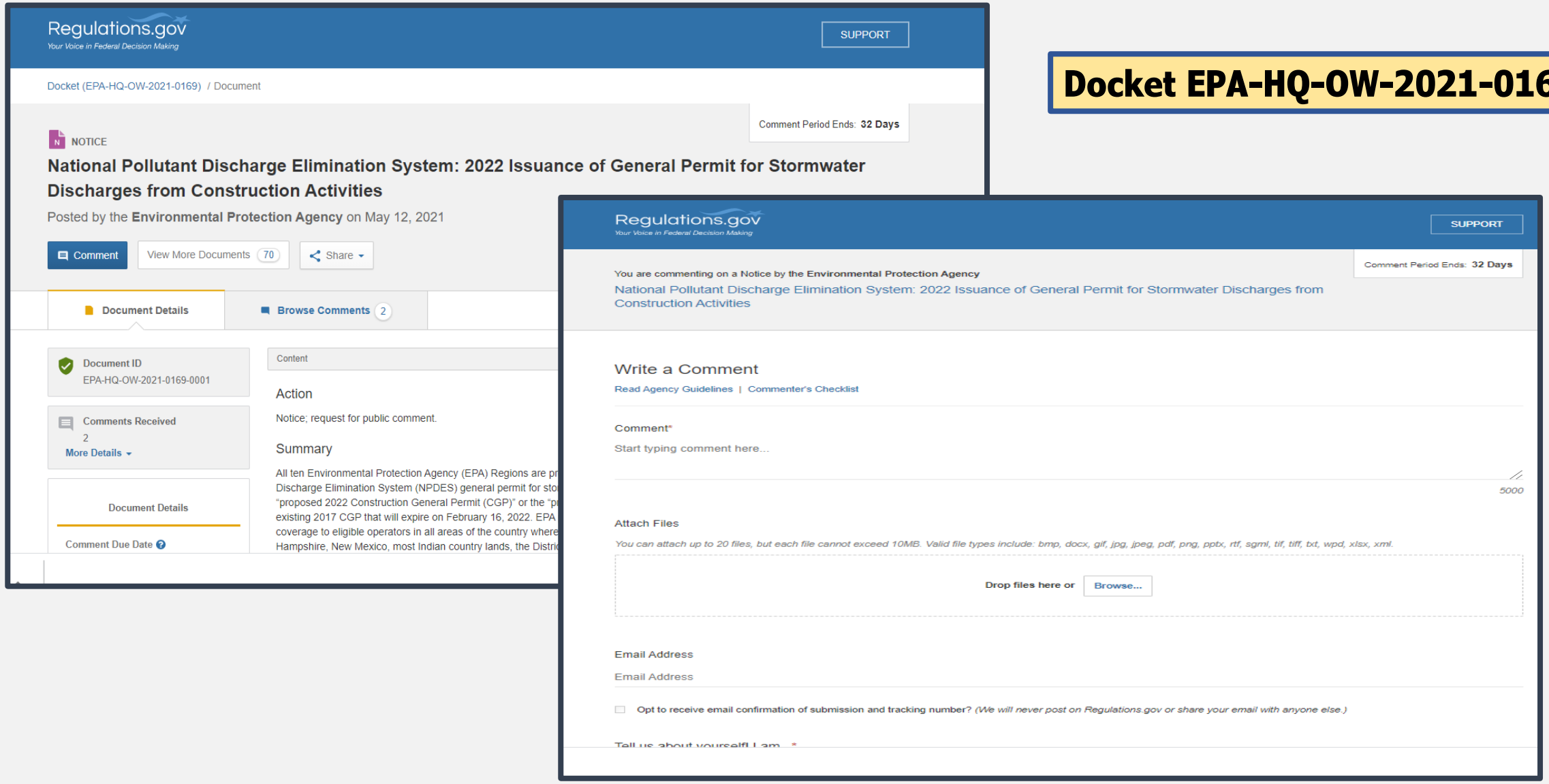
- Require for all operators that no more than 10 acres of land be disturbed at any one time (areas that were disturbed but have been stabilized would not count towards the total);
- Same as previous, but allow for greater disturbances on a case-by-case basis where EPA provides authorization and additional conditions are met, such as requiring:
  - Inspections to be conducted more frequently (e.g., two times per week);
  - Stabilization of disturbed areas immediately where construction activity will cease for 7 days or longer; and/or

Requests for comment are identified within the text of the proposed permit in blue font

There are 8 specific requests for comment in the proposed permit

Submitting Comments

Docket EPA-HQ-OW-2021-0169



Summary of Significant Changes

Stormwater Controls

Updated requirements for perimeter controls

PART 2.2.3

2017 CGP

Install sediment controls along any perimeter areas of the site that will receive pollutant discharges.

Remove sediment before it has accumulated to one-half the above-ground height of the perimeter control.

PROPOSED 2022 CGP

Perimeter controls, with limited exceptions, are required upgradient of natural buffers.

Install on the contour and with both ends bent upslope so that stormwater doesn't circumvent the edge of the control.

After storms, if there is evidence that stormwater has circumvented or undercut the control, extend the control to prevent circumventing and repair undercut areas to fix the problem.

Photographic documentation of final stabilization

PART 8.2.1.a

2017 CGP

The permittee must certify on the Notice of Termination (NOT) that it has met the requirements for final site stabilization.

PROPOSED 2022 CGP

Permittee must submit photographs that clearly show the site's compliance with the final stabilization requirements.

Clarify requirements for on-site chemical containers

PART 2.3.3.C

2017 CGP

Store petroleum products or other chemicals in water-tight containers and provide either (1) cover to minimize exposure, or (2) a similarly effective means to minimize pollutant discharge.

PROPOSED 2022 CGP

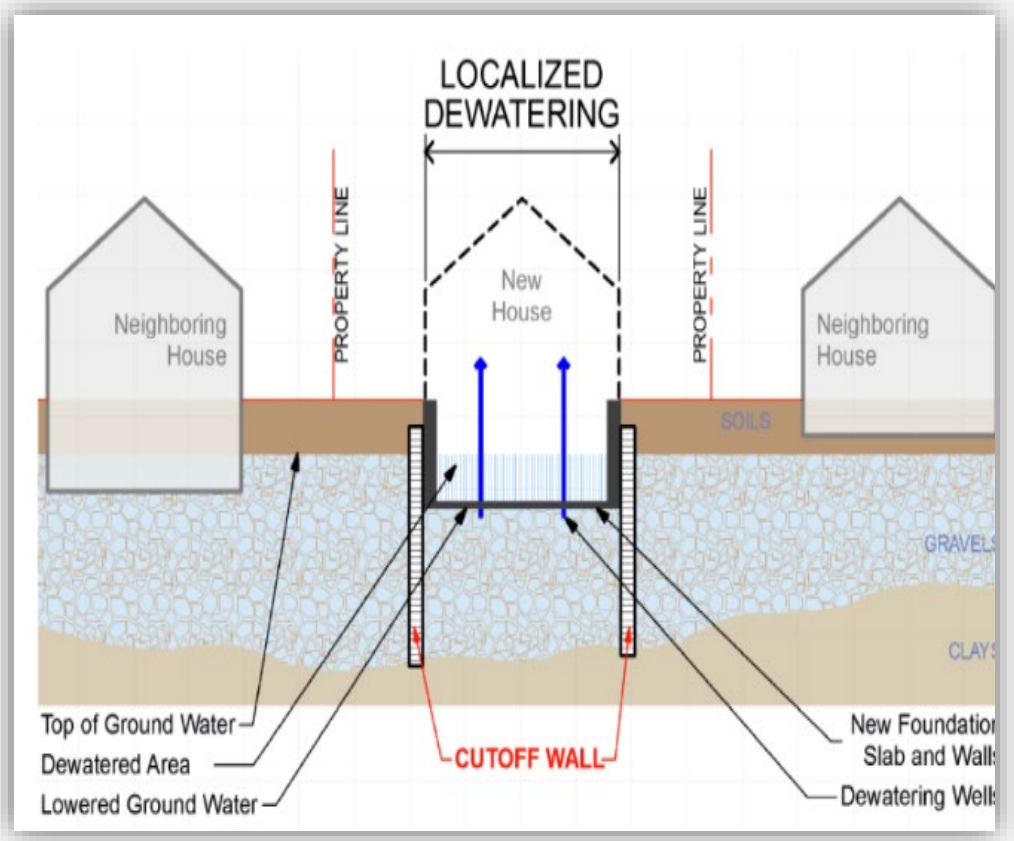
All chemicals must be stored in water-tight containers; additional controls depend on the volume of chemical stored on site.

- If 55 gallons or less, use spill containment pallet if stored outside and have a spill kit available to respond to leaks.
- If more than 55 gallons, store containers a minimum 50 feet away from waters and drainage systems and provide either cover or secondary containment.

DEWATERING REQUIREMENTS

What Is Dewatering

- Dewatering is the act of draining accumulated stormwater and/or ground water from excavations, foundations, vaults, trenches, and other similar points of accumulation.
- Often necessary for construction activities to commence or continue and to maintain the integrity of the structure being constructed.



Source: Save Palo Alto's Groundwater, *Building basements without wasting water*

Dewatering Discharges

- Untreated water from construction dewatering operations may contain pollutants that, if discharged to a storm drainage system or natural water course, may exceed water quality standards of the receiving water.

- The most common pollutant discharged from dewatering operations is sediment.

State Dewatering Permits

State dewatering requirements may appear in either dewatering-specific general permits or as part of a state CGP.

A growing number of state dewatering permits include stricter requirements than EPA's permit:

- Comply with numeric effluent limits (MA, NH, NJ, CO, MT, UT, WY, CA, HI, NV, AK)
- Conduct effluent monitoring for multiple pollutant parameters (MA, NH, NJ, CO, UT, WY, HI, AK SD)
- Conduct daily inspections (HI and AK permits, recommended in PA and MI)

See Fact Sheet for additional discussion of state requirements.

Use greater specificity to describe dewatering controls

PART 2.4

2017 CGP

Treat dewatering discharges with controls to minimize pollutant discharges.

- Uncontaminated, non-turbid water can be discharged without controls.
- Use oil-water separator designed to remove oil and grease.
- Comply with velocity dissipation requirements.

PROPOSED 2022 CGP

All dewatering water must be routed through a sediment control designed to prevent discharges with visual turbidity.

Excludes coverage of dewatering discharges from contaminated sites.

Other requirements:

- Discharge must not cause formation of visible sheen or hydrocarbon deposits on the bottom or shoreline of the water body.
- To prevent erosion: (1) use stable, erosion-resistant surfaces for the discharge, (2) do not place controls on steep slopes, and (3) discharge must not cause re-suspension of sediments in receiving water.

Modify inspection protocols for dewatering

PART 4.3.2/ 4.6.3

2017 CGP

No specific inspection provisions for dewatering.

PROPOSED 2022 CGP

Inspections required daily when discharging dewatering water.

For each inspection report, you must document:

- Approximate times discharge began and ended;
- Estimated rate of discharge;
- Whether there is a sediment plume, or a visible sheen or hydrocarbon deposit, is observed; and
- Photographs of (1) dewatering water prior to and following treatment, (2) the treatment control in operation, and (3) the point of discharge to a water of the U.S.

When corrective action is required for dewatering

PART 5.1.5

2017 CGP

No specific corrective actions for dewatering problems.

PROPOSED 2022 CGP

Corrective action required where sediment plume or visible sheen or hydrocarbon deposit observed by permittee or documented by EPA, state, or local authorities.

- Permittee then required to take immediate action to correct the condition, including immediately suspending dewatering discharge and taking steps to correct problem.

Potential additional dewatering measures for sensitive waters

Request for Comment

2017 CGP	Proposed 2022 CGP
No specific requirements for dewatering discharges to sensitive waters.	Request for comment on requiring turbidity monitoring for dewatering discharges to sensitive waters. Two potential options: 1. Benchmark monitoring approach or 2. Indicator monitoring approach

Turbidity Monitoring

- Visual turbidity refers to a sediment plume or other cloudiness in the water caused by sediment that can be observed

- Turbidity can be an effective indicator of the effectiveness of construction site controls

- Typically measured by portable turbidity meter
  - Measured in nephelometric turbidity units (NTUs)
  - Results are instantaneous
  - Median one-time cost of around $1,000

Turbidity Monitoring

Option # 1: Benchmark Monitoring Approach

Request for Comment

- Monitor once per day on any day that a dewatering discharge occurs.
- Compare the average of turbidity values for each week with an established benchmark.
  - EPA recommends using a benchmark of 50 NTU.
- If the weekly average exceeds the benchmark value, corrective action required to determine the source of the problem and to make any necessary repairs or upgrades to lower the turbidity levels.
- Submit quarterly monitoring reports to EPA.

Benchmark Options

- Fixed benchmark level - 50 NTU
  - Within the range of state-established turbidity criteria
  - Same as benchmark used for EPA's 2021 MSGP
  - Limited state data available suggest 50 NTU is achievable

- Use whichever turbidity standard applies
  - Most require data on natural background conditions ("Class B waters shall not exceed naturally occurring conditions by more than 10 NTUs")
  - Difficult to implement because the benchmark would require background data and each site would have a different benchmark level

Source: U.S. Geological Survey.

Turbidity Monitoring

Option # 2: Indicator Monitoring Approach

Request for Comment

- Same monitoring and reporting requirements as Benchmark Monitoring Approach, but no benchmark would be established.
- Primary purpose would be to provide operators and EPA with a baseline for understanding discharge water quality and the effectiveness of treatment.

Turbidity Monitoring

Additional Requests for Comment

- Are you supportive of including turbidity monitoring for dewatering discharges in the permit?
- Do you have a preference between the two monitoring approaches?
- If you have had experiences with turbidity monitoring, provide feedback on:
  - What type of instrument did you use?
  - Did you find turbidity to be a reliable indicator of the effectiveness of your controls?
  - Did making changes to the controls work to reduce turbidity levels?
  - Did you report results or just keep them for your records?
  - Did you rely on a contractor?
  - How much did it cost to conduct turbidity monitoring?

Inspection/Corrective Action Requirements

When are inspections required for snowfall events

PART 4.2.2

2017 CGP

If you choose to conduct inspections once every 14 days, you must also conduct inspections:

- Within 24 hours of a 0.25-inch rain event, or
- If snowmelt runoff results in a discharge.

PROPOSED 2022 CGP

Snowfall inspections required within 24 hours of a discharge caused by snowmelt from a 3.25 inch or greater accumulation of snow.

- 3.25 inches is the equivalent of 0.25 inches of rain.

Inspections during seasonally dry periods in arid or semi-arid areas

PART 4.4.2

2017 CGP

Inspection frequencies and stabilization timeframes are different for sites located in arid, semi-arid, or drought-stricken areas that will be active during the "seasonally dry period or a period during which drought is occurring."

Permit does not define "seasonally dry period."

PROPOSED 2022 CGP

Seasonally dry period to be defined as a month in which the long-term average total precipitation is less than or equal to 0.5 inches.

EPA has developed an on-line **climate look-up tool** that allows permittees to determine if their site is located in an arid or semi-arid area, and if any of the months out of the year are considered seasonally dry.

- Searchable by zip code.
- Climate look-up tool located in permit docket at https://www.regulations.gov/document/EPA-HQ-OW-2021-0169-0028

Check for signs of sedimentation from discharge

PART 4.6.1.d

2017 CGP

Check for signs of visible erosion and sedimentation that have occurred and are attributable to the discharge at points of discharge and the banks of any waters flowing within or immediately adjacent to the site.

PROPOSED 2022 CGP

Added: check for signs of sedimentation at points downstream from the point of discharge that could be attributable to the discharge.

- Ex: Sand bars with no vegetation growing on top.

New training requirements for construction inspections

PART 6.3

2017 CGP

Permittee must ensure that any individual conducting inspections is a "qualified person."

A qualified person is someone who possesses appropriate skills and training to assess the effectiveness of any stormwater control selected and installed to meet the requirements of the permit.

PROPOSED 2022 CGP

Any personnel conducting inspections on a permitted site must either:

- Complete the EPA construction inspection course and pass the associated exam; or
- Hold a valid construction inspection certification or license from a program that addresses the same principles as EPA's course.

EPA is in the process of developing an online course that will be available to anyone needing to meet the CGP requirements.

- To be available in English and Spanish.

Differentiate between routine maintenance and corrective action

PART 2.1.4

2017 CGP

If at any time the permittee finds that a stormwater control needs routine maintenance, such work must be initiated immediately and completed by the end of the next business day.

- What is considered "routine maintenance" is not defined.

Corrective action required if the control must be repaired or replaced.

PROPOSED 2022 CGP

Routine maintenance defined as work that can be completed within 24 hours to repair or replace a stormwater control.

Corrective action required if:

- The repair or replacement will take more than 24 hours;
- The same routine maintenance fix to the same control is needed repeatedly (i.e., 3 or more times); and
- The control was not designed or installed correctly.

Clarify that inspection and corrective action records can be kept in electronic form

PART 4.7.3/ 5.4.3

2017 CGP

Permit is silent on whether inspection and corrective action reports may be kept in electronic form.

However, EPA specified in a webpage FAQ that keeping these reports electronically is allowed where they are:

- In a format that can be read in a similar manner as a paper record;
- As legally dependable as a paper record;
- Accessible during an inspection to the same extent as a paper record.

PROPOSED 2022 CGP

Includes language from the FAQ in the permit to clarify that inspection reports and corrective action materials can be kept electronically.

Requests for Public Comment

Definition of Operator

PART 1.1.1

Issue

Whether to modify the definition of "operator" to clarify that the entities who pay for work performed are required to obtain permit coverage.

Existing Requirement

An operator is any party that either:

a. Has operational control over construction plans/specifications, and has the ability to make modifications to those plans/specifications; or
b. Has day-to-day operational control of those activities at a project that are necessary to ensure compliance with the permit conditions.

Request for Comment

Should the definition be modified to include in (a) persons that determine acceptance of work and payment for work performed to ensure permit compliance?

Is the definition already broad enough to include these types of entities?

Waiting Period for Permit Coverage

Part 1.4.3

Issue

Whether to change the waiting period to account for additional time needed for review of the NOI.

Existing Requirement

After submitting a complete NOI, permit coverage is held for 14 days to give the Fish & Wildlife Service and National Marine Fisheries Service ("the Services") the opportunity to review the NOI for potential impacts to species.

Request for Comment

Should the 14-day waiting period be extended to 30 days?

If opposed, describe how such an extension would impact your projects?

Stabilization Timeframes for Larger Construction Disturbances

Part 2.2.14.a

Issue

Whether you have found the existing stabilization timeframes to be an effective incentive to phase construction activities.

Existing Requirement

If a site disturbs more than 5 acres of land at any one time, stabilization must be initiated and completed in 7 days; by comparison, the deadline is 14 days for sites disturbing 5 acres of land or less at any one time.

Request for Comment

Has the existing requirement proven to be an effective incentive to phase construction activities?

- If so, how have you changed your operational practices to disturb no more than 5 acres at a time?
- If not, what alternative threshold or other requirements would be effective?

Request for feedback on capping disturbances at 10 acres at any one time?

Or, whether to adopt a 10-acre cap along with case-by-case exceptions and additional requirements?

Additional Flexibility for Waste Controls

Part 2.3.3. a / e

Issue
Whether additional flexibilities should apply to certain construction wastes.

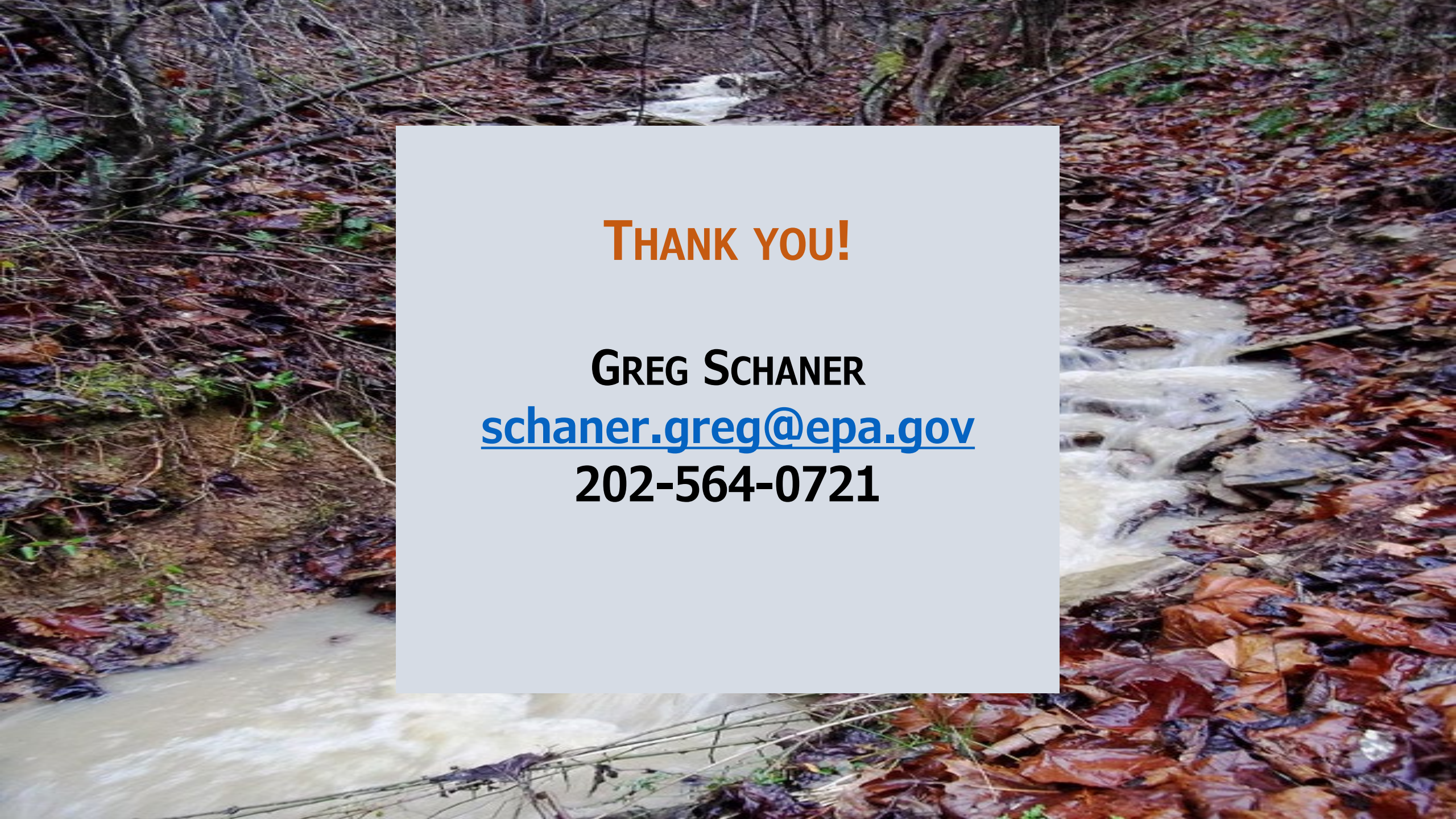
Existing Requirement
For storage of building materials and products, pollution prevention practices are not required where exposure to precipitation and to stormwater will not result in discharge of pollutants, or exposure poses little risk of stormwater contamination.

No similar allowance is provided for the waste remnant of any of the same materials.

Request for Comment
Should this type of exception apply under any circumstances?

What types of materials should be treated in this way because they will not discharge pollutants, and why?

How should the permit ensure that storage of these materials is kept separate from other waste materials that could discharge pollutants?



Thank you!

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