

Resources

EPA Proposes New General Permit Regulating Stormwater Discharges From Construction Activities

April 26, 2016

Building contractors and developers should be aware of the U.S. EPA's newly proposed National Pollution Discharge Elimination System (NPDES) general permit regulating stormwater discharges from construction activities. The draft 2017 Construction General Permit (CGP) is proposed to replace the 2012 version, which is set to expire on February 16, 2017. Like the 2012 version, the 2017 draft permit generally applies to construction site operators disturbing one or more acres of land (or less than one acre, but part of a larger common plan or development).

The proposed draft permit makes the following noteworthy changes to the 2012 permit:

1. Prohibits hazardous substances, such as paint or caulk containing polychlorinated biphenyls (PCBs), from authorized non-stormwater discharges of external building washdown waters;
2. Requires permittees to include the U.S. EPA's contact information in the public notices that are already required to be posted in a prominent location near construction sites;
3. Requires permittees to cover or use another method of temporary stabilization for inactive soil stockpiles and land clearing debris piles where the piles will be unused for 14 or more days (the 2012 CGP only requires coverage "where practicable");
4. Requires permittees to keep waste container lids closed (or provide some other secure cover where containers do not have lids);
5. For demolition of structures with at least 10,000 square feet of floor space built or renovated before 1980, requires permittees to implement controls to minimize the exposure of PCB-containing building materials to precipitation and stormwater; and
6. Requires permittees to state on their Notice of Intent (NOI) form the type of construction activities that will be involved.

The U.S. EPA is also soliciting comments on numerous potential changes that it has not included in the draft general permit, but is apparently considering. These potential changes include:

1. Requiring sites with multiple operators to submit a group Stormwater Pollution Prevention Plan (SWPPP);
2. Modifying the standard deadline to complete site stabilization once initiated to seven calendar days from 14 days (currently only sensitive sites are subject to the seven day deadline);
3. Requiring additional controls to ensure that pollutants in construction dewatering discharges are minimized;
4. Increasing the minimum site inspection frequency from (a) an option of once every seven days, or once every 14 days and within 24 hours of a storm event producing 0.25 inches or more, to (b) a single requirement of every seven days and within 24 hours of a storm event producing 0.25 inches or more;
5. Requiring this same minimum site inspection frequency for snowmelt runoff discharges (in the 2017 draft permit, the U.S. EPA "clarifies" that snowmelt runoff qualifies as a stormwater event, thereby triggering the inspection requirement); and
6. Requiring operators to make the SWPPP (or at least a portion of it) available to the public by either posting it online or providing it to the U.S. EPA.

The 2017 CGP will cover all eligible construction operators located in geographic areas where the U.S. EPA is the NPDES permitting authority, including Idaho, Massachusetts, New Hampshire, New Mexico, and Washington, D.C. Although state-issued NPDES permits don't need to be identical to the U.S. EPA's general permit, state-issued permit requirements must be at least as stringent and extensive as those promulgated by U.S. EPA in NPDES regulations. In practice, many state

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permitting authorities simply use the content and format of the U.S. EPA general permit.

These potential permit changes could significantly increase the time, effort, and resources required to comply with stormwater management obligations. Moreover, those construction operators not familiar with the new obligations risk potentially debilitating enforcement actions from permitting agencies. Dykema's experienced team of U.S. EPA rulemaking and environmental compliance attorneys can help construction operators comply with these potential permit changes.

If you have any questions regarding the topics covered in this alert, please feel free to contact any of the attorneys listed to the left or your Dykema relationship attorney.

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