# 2022 NPDES General Permit for Construction Stormwater Discharges: U.S. Environmental Protection Agency Proposed Federal Renewal

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The United States Environmental Protection Agency ("EPA") proposed a 2022 Clean Water Act National Pollution Discharge Elimination System General Permit ("CGP") for construction stormwater discharges in the May 12th Federal Register. See 86 Fed. Reg. 26023.

The CGP is a general permit (as opposed to an individual permit) utilized by EPA to address stormwater discharges associated with specified construction activities.

EPA's CGP is utilized in states that do not have primacy for this permitting program.

The proposed 2022 CGP represents the latest renewal of this permit. It would replace the existing 2017 CGP that will expire on February 16, 2022.

EPA proposes to issue the 2022 CGP for five years. It would provide permit coverage to eligible operators in all areas of the United States where EPA is the NPDES permitting authority. Such areas include Massachusetts, New Hampshire, New Mexico, most of Indian country lands, the District of Columbia, and U.S. territories except for the U.S. Virgin Islands and certain federal facilities.

Note that Arkansas has been authorized to administer the NPDES stormwater program. As a result, the EPA 2022 CGP would not be applicable in the State of Arkansas. Nevertheless, states with primacy often take into account to some extent EPA's choices (i.e., in terms of permit conditions and limitations) in revising or reissuing their general stormwater permits.

EPA describes the proposed changes as being encompassed by one of two categories:

- Changes to improve the clarity of the CGP
- Approved stormwater control and stormwater pollution prevention plan ("SWPPP") products (inclusion of new language to clearly state that EPA does not endorse specific stormwater control or SWPPP products or vendors)
- Differentiate between routine maintenance and correction action (defines routine maintenance as repairs to or replacement of stormwater controls that can be completed within 24 hours of first discovering the need for the repair or replacement)
- Clarify application of perimeter control and natural buffer requirements (perimeter controls must be installed upgradient of any natural buffers except in situations where the perimeter control is being used by the permittee to fulfill one of the buffer alternative requirements [in which case the permittee would not be required to install a second perimeter control])

- Clarify the permit flexibilities for arid and semi-arid areas (establishes alternative stabilization and inspection schedules for arid and semi-arid areas that are reflective of the different climatic and precipitation conditions that exist in some areas)
- Clarifies requirements for inspections during snowmelt conditions (snowfall precipitation that is equivalent to the 0.25-inch rain event [which triggers the need for an inspection if the operator chooses to inspect its site on a bi-weekly basis pursuant to Part 4.2.2])
- Availability of SWPPP, inspection reports, and corrective action log in electronic form (includes text to make clear that electronic versions of the SWPPP, inspection reports, and corrective action logs may be used as long as they meet certain minimum requirements)
- Updated process for Endangered Species Act eligibility determinations (proposes several updates to Appendix D of the CGP – which establishes procedures for operators to follow in determining their eligibility for coverage with respect to the protection of endangered and threatened species)
- Added specificity to the CGP requirements
- Perimeter control installation and maintenance requirements (additional perimeter control installation and maintenance requirements that are focused on ensuring that these controls continue to work effectively)
- Pollution prevention requirements for chemicals used and stored on site (changes to the pollution prevention requirements for diesel fuel, oil, hydraulic fuels, or other petroleum products, and other chemicals)
- Dewatering discharge requirements (changes to the permit's dewatering requirements to improve compliance and further reduce pollutant loads to waterways)
- Training requirements for personnel conducting site inspections (modifications to the training requirements for personnel conducting site inspections such as:
- have completed the new EPA construction inspection course developed for this permit and passed the exam, or
- hold a current valid certification or license from a program that covers essentially the same principles as EPA's inspection course
- Documenting signs of sedimentation attributable to construction site discharges (specifies that during the inspection, operators must check for signs of sedimentation at points downstream from the point of discharge that could be attributable to their discharges)
- Photo documentation of adequate site stabilization (addition of a revision requiring operators as part of their Notice of Termination to take and submit photographs showing the stabilized areas of the site following completion of construction)
- Notice of Intent questions (addition of new questions to the Notice of Intent form that construction operators will use to obtain coverage under the 2022 CGP)

A copy of the Federal Register can be found here.