

mgm of water for the applicant's natural gas exploration and production activities in Broome and Delaware Counties in the State of New York. Surface water will be withdrawn at a site on Oquaga Creek within the Oquaga Creek Watershed in the Town of Sanford, Broome County, New York. Oquaga Creek drains to the West Branch Delaware River. The withdrawal site is located within the drainage area of the section of the non-tidal Delaware River known as the Upper Delaware, which is classified as Special Protection Waters.

18. *Exelon Generation Company, LLC—Schuylkill, D-2010-040 CP-1*. An application for the approval of an existing combined discharge of up to 231.84 mgd of NCCW and traveling screen backwash from the Schuylkill Generating Station (SGS) via Outfall No. 001. Outfall No. 001 discharges to the tidal portion of the Schuylkill River at River Mile 92.47—5.6 (Delaware River—Schuylkill River) in Water Quality Zone 4 in the City of Philadelphia, Pennsylvania.

19. *South Jersey Port Corporation, D-2010-044 CP-1*. An application for approval of the Paulsboro Marine Terminal dredging and wharf construction project. The proposed project includes: The construction of a deep water marine terminal consisting of a 150-foot wide by 2,850-foot long wharf providing for: Four berths for the loading and unloading of a variety of general bulk and break bulk cargo; dredging in the Delaware River of approximately 334,000 cubic yards; the construction of a public, bi-directional access roadway between Paradise Road in the Township of West Deptford and Universal Road in the Borough of Paulsboro; and the construction of a 25-foot high, three span composite steel plate girder bridge across Mantua Creek just upstream of its confluence with the Delaware River. The proposed Paulsboro Marine Terminal site is located at the former 130-acre BP Oil Terminal site and adjacent 60-acre Essex Industrial Chemicals site in the Borough of Paulsboro, Gloucester County, New Jersey, along the Delaware River in Water Quality Zone 4 at approximately River Mile 90.

In addition to the standard business meeting items, consisting of adoption of the Minutes of the Commission's March 2, 2011 business meeting, announcements of upcoming meetings and events, a report on hydrologic conditions, reports by the Executive Director and the Commission's General Counsel, and public dialogue, the business meeting also will include public hearings on: (a) A resolution to increase the maximum daily surface

water withdrawal from the Schuylkill River by Exelon's Limerick Generating Station (LGS), without increasing LGS's total monthly allocation; (b) a hearing at which the Lambertville Municipal Utilities Authority is requested to show cause why it should not be assessed a penalty in accordance with the *Delaware River Basin Compact* and DRBC regulations for failing to obtain DRBC review and approval prior to undertaking improvements to its wastewater treatment plant; (c) a resolution authorizing the Executive Director to enter into agreements for information technology upgrades to improve data management and retrieval; and (d) a resolution amending Resolution No. 2010-11 to increase the authorized amount of the Commission's contract for management of comments received on a proposed rulemaking concerning natural gas development. The Commissioners also will consider a Resolution for the Minutes authorizing the Executive Director to award a contract for janitorial services; a resolution to adopt the Delaware River Basin Commission current expense and capital budgets for fiscal year 2012 (on which the Commission held a public hearing on March 2, 2011); and a resolution approving election of the Commission Chair, Vice Chair and Second Vice Chair for fiscal year 2012.

Draft dockets scheduled for public hearing on May 11, 2011 can be accessed through the Notice of Commission Meeting and Public Hearing on the Commission's Web site, [drbc.net](http://drbc.net), ten days prior to the meeting date. Additional public records relating to the dockets may be examined at the Commission's offices. Please contact William Muszynski at 609-883-9500, extension 221, with any docket-related questions.

Note that conference items are subject to change and items scheduled for hearing are occasionally postponed to allow more time for the Commission to consider them. Please check the Commission's Web site, [drbc.net](http://drbc.net), closer to the meeting date for changes that may be made after the deadline for filing this notice.

Individuals who wish to comment for the record on a hearing item or to address the Commissioners informally during the public dialogue portion of the meeting are asked to sign up in advance by contacting Ms. Paula Schmitt of the Commission staff, at [paula.schmitt@drbc.state.nj.us](mailto:paula.schmitt@drbc.state.nj.us) or by phoning Ms. Schmitt at 609-883-9500 ext. 224.

Individuals in need of an accommodation as provided for in the Americans with Disabilities Act who

wish to attend the informational meeting, conference session or hearings should contact the Commission Secretary directly at 609-883-9500 ext. 203 or through the Telecommunications Relay Services (TRS) at 711, to discuss how the Commission can accommodate your needs.

Dated: April 19, 2011.

**Pamela M. Bush,**

*Commission Secretary.*

[FR Doc. 2011-9914 Filed 4-22-11; 8:45 am]

BILLING CODE 6360-01-P

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-9297-9; EPA-HQ-OW-2010-0782]

### Draft National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharges From Construction Activities

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA's Regional Offices are proposing for public comment the draft National Pollutant Discharge Elimination System general permit for stormwater discharges from large and small construction activities. This draft construction general permit includes new requirements that implement the technology-based Effluent Limitation Guidelines and New Source Performance Standards, which were issued by EPA for the construction and development industry on December 1, 2009. The draft permit also includes new water quality-based requirements for construction sites discharging stormwater to waters requiring additional pollutant control. EPA proposes to issue this construction general permit for five (5) years, and to provide permit coverage to eligible existing and new construction projects in all areas of the country where EPA is the National Pollutant Discharge Elimination System permitting authority, including Idaho, Massachusetts, New Hampshire, and New Mexico, Indian Country Lands, Puerto Rico, Washington, DC, and U.S. territories and protectorates.

**DATES:** Comments on the draft general permit must be received on or before June 24, 2011. Comments on the preparation and issuance of the draft/preliminary Environmental Assessment must be received by May 25, 2011.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OW-2010-0782, by one of the following methods:

1. <http://www.regulations.gov>: Follow the online instructions for submitting comments.

2. *E-mail*: [ow-docket@epa.gov](mailto:ow-docket@epa.gov)

3. *Mail to*: Water Docket, U.S.

Environmental Protection Agency, Mail Code: 2822T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention: Docket ID No. EPA-HQ-OW-2010-0782. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions*: Direct your comments to Docket ID No. EPA-HQ-OW-2010-0782. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov) your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

*Docket*: All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at a docket facility. The Office of Water (OW) Docket Center is open from 8:30 until 4:30 p.m., Monday through Friday, excluding legal holidays. The OW Docket Center telephone number is (202) 566-2426, and the Docket address is OW Docket, EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20004. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744.

**FOR FURTHER INFORMATION CONTACT:** For further information on the draft NPDES general permit, contact the appropriate EPA Regional office listed in Section I.G, or Greg Schaner, EPA Headquarters, Office of Water, Office of Wastewater Management at tel.: 202-564-0721 or e-mail: [schaner.greg@epa.gov](mailto:schaner.greg@epa.gov), or Erika Farris, EPA Headquarters, Office of Water, Office of Wastewater Management at tel.: 202-564-7548, or e-mail [farris.erika@epa.gov](mailto:farris.erika@epa.gov). For further information on the preparation and issuance of the draft/preliminary Environmental Assessment, contact Jessica Trice, EPA Headquarters, Office of Federal Activities, NEPA Compliance

Division at tel: 202-564-6646, or e-mail [trice.jessica@epa.gov](mailto:trice.jessica@epa.gov).

**SUPPLEMENTARY INFORMATION:** This supplementary information is organized as follows:

**Table of Contents**

- I. General Information
  - A. Does this action apply to me?
  - B. How can I get copies of these documents and other related information?
  - C. What should I consider as I prepare my comments for EPA?
  - D. Will public hearings be held on this action?
  - E. What process will EPA follow to finalize the permit?
  - F. Who are the EPA regional contacts for this permit?
- II. Background of Permit
  - A. Statutory and Regulatory History
  - B. Vacature of the C&D Rule Numeric Limit and Implications for This Permit
- III. Summary of the Draft CGP
  - A. Non-Numeric C&D Rule Requirements
  - B. Numeric C&D Rule Requirements
  - C. Water Quality-Based Effluent Limits
  - D. Summary of Significant Proposed Changes to the CGP
  - E. Permit Provisions for Which EPA is Soliciting Comment
  - F. Construction Projects Eligible for Permit Coverage
  - G. Geographic Coverage
- IV. Notice of Intent to Prepare an Environmental Assessment (EA) for the National Pollutant Discharge Elimination System (NPDES) General Permit for Discharges from Large and Small Construction Activities
- V. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
- VI. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

**I. General Information**

*A. Does this action apply to me?*

The draft construction general permit ("draft CGP") applies to the following construction activities:

TABLE 1—ENTITIES POTENTIALLY REGULATED BY THIS PERMIT

Category	Examples of Affected Entities	North American Industry Classification System (NAICS) Code
Industry ....	Construction site operators disturbing 1 or more acres of land, or less than 1 acre but part of a larger common plan of development or sale if the larger common plan will ultimately disturb 1 acre or more, and performing the following activities:	
	Building, Developing and General Contracting .....	233
	Heavy Construction .....	234

EPA does not intend the preceding table to be exhaustive, but provides it as a guide for readers regarding entities likely to be regulated by this action.

This table lists the types of activities that EPA is now aware of that could potentially be affected by this action. Other types of entities not listed in the

table could also be affected. To determine whether your facility is regulated by this action, you should carefully examine the definition of

“construction activity” and “small construction activity” in existing EPA regulations at 40 CFR 122.26(b)(14)(x) and 122.26(b)(15), respectively. If you have questions regarding the applicability of this action to a particular entity, consult one of the persons listed for technical information in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Eligibility for coverage under the draft CGP is limited to operators of stormwater discharges from “new sources”, “existing permitted dischargers”, “existing unpermitted dischargers”, “new operators of new sources or existing permitted dischargers”, and “emergency-related projects”. A “new source” is a construction project that commenced or will commence construction activities after February 1, 2010, which is the effective date of the new source performance standards promulgated as part of the Construction and Development (C&D) rule on December 1, 2009. An “existing permitted discharger” is a construction project that is not a new source, because construction activities commenced prior to February 1, 2010 and prior coverage was obtained under either the 2003 CGP, the 2008 CGP, or under another NPDES permit. An “existing unpermitted discharger” is a construction project that is not a new source, because construction activities commenced prior to February 1, 2010, but has never received coverage for its construction discharges under an effective NPDES permit. A “new operator of a new source or existing permitted discharger” is an operator that replaces an existing operator on a construction project through transfer or ownership and/or operation. An “emergency-related project” is one in which earth-disturbing activities need to take place immediately in order to respond to a public emergency (e.g., tornado, hurricane, earthquake, flood), and the related work requires immediate authorization to avoid imminent endangerment to human health or the environment. Coverage under this permit is available to operators of eligible projects located in those areas where EPA is the permitting authority and has opted to make this general permit for use. A list of eligible areas is included in Appendix B of the draft CGP.

#### *B. How can I get copies of these documents and other related information?*

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. EPA-HQ-OW-

2010-0782. The official public docket is the collection of materials that is available for public viewing at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. Although all documents in the docket are listed in an index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Publicly available docket materials are available in hard copy at the EPA Docket Center Public Reading Room, open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744 and the telephone number for the Water Docket is (202) 566-2426.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the United States government on-line source for Federal regulations at <http://www.regulations.gov>.

Electronic versions of this draft permit and fact sheet are available on EPA's NPDES Web site at <http://www.epa.gov/npdes/stormwater/cgp>.

An electronic version of the public docket is available through the EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.regulations.gov> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/dockets>. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the Docket Facility identified in Section I.B.1.

#### *C. What should I consider as I prepare my comments for EPA?*

1. *Submitting CBI.* Do not submit this information to EPA through [regulations.gov](http://regulations.gov) or e-mail. Clearly mark all of the information that you claim to be CBI. For CBI information on computer disks mailed to EPA, mark the surface of the disk as CBI. Also identify electronically the specific information contained in the disk or that you claim is CBI. In addition to one complete version of the specific information claimed as CBI, you must submit a copy that does not contain the information claimed as CBI for inclusion in the public document. Information marked as CBI will not be disclosed except in

accordance with procedures set forth in 40 CFR Part 2.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify this permit by docket number and other identifying information (subject heading, **Federal Register** date, and page number).
- Where possible, respond to specific questions or organize comments by referencing a section or part of this permit.
- Explain why you agree or disagree, suggest alternatives, and suggest substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible.
- To ensure that EPA can read, understand, and therefore properly respond to comments, the Agency would prefer that commenters cite, where possible, the paragraph(s) or section in the fact sheet or permit to which each comment refers.

- Make sure to submit your comments by the comment period deadline identified.

*D. Will public hearings be held on this action?*

EPA has not scheduled any public hearings to receive public comment concerning the draft permit. All persons will continue to have the right to provide written comments during the public comment period. However, interested persons may request a public hearing pursuant to 40 CFR 124.12 concerning the draft permit. Requests for a public hearing must be sent or delivered in writing to the same address as provided above for public comments prior to the close of the comment period. Requests for a public hearing must state the nature of the issues proposed to be raised in the hearing. Pursuant to 40 CFR 124.12, EPA shall hold a public hearing if it finds, on the basis of requests, a significant degree of public interest in a public hearing on the draft permit. If EPA decides to hold a public hearing, a public notice of the date, time and place of the hearing will be made at least 30 days prior to the hearing. Any person may provide written or oral statements and data pertaining to the draft permit at the public hearing.

*E. What process will EPA follow to finalize the permit?*

After the close of the public comment period, EPA intends to issue a final permit on or prior to the expiration date of the current 2008 CGP. [Please note that EPA is proposing in another notice today an extension of the 2008 CGP to January 31, 2012 in order to provide the Agency with sufficient time to finalize this permit.] This permit will not be issued until all significant comments have been considered and appropriate changes made to the permit. EPA's responses to public comments received will be included in the docket as part of the final permit issuance. Once the final permit becomes effective, eligible operators of existing and new construction projects may seek authorization under the new CGP. Any construction site operator obtaining permit coverage prior to the expiration date of the 2008 CGP will automatically remain covered under that permit until the earliest of:

- The operator submits a Notice of Termination (NOT); or
- EPA issues an individual permit or denies coverage under an individual permit for the site's stormwater discharges.

*F. Who are the EPA regional contacts for this permit?*

For EPA Region 1, contact Jessica Hing at tel.: (617) 918-1560 or e-mail at [hing.jessica@epa.gov](mailto:hing.jessica@epa.gov).

For EPA Region 2, contact Stephen Venezia at tel.: (212) 637-3856 or e-mail at [venezia.stephen@epa.gov](mailto:venezia.stephen@epa.gov), or for Puerto Rico, contact Sergio Bosques at tel.: (787) 977-5838 or e-mail at [bosques.sergio@epa.gov](mailto:bosques.sergio@epa.gov).

For EPA Region 3, contact Chuck Schadel at tel.: (215) 814-5761 or e-mail at [schadel.chuck@epa.gov](mailto:schadel.chuck@epa.gov).

For EPA Region 4, contact Michael Mitchell at tel.: (404) 562-9303 or e-mail at [mitchell.michael@epa.gov](mailto:mitchell.michael@epa.gov).

For EPA Region 5, contact Brian Bell at tel.: (312) 886-0981 or e-mail at [bell.brianc@epa.gov](mailto:bell.brianc@epa.gov).

For EPA Region 6, contact Suzanna Perea at tel.: (214) 665-7217 or e-mail at [perea.suzanna@epa.gov](mailto:perea.suzanna@epa.gov).

For EPA Region 7, contact Mark Matthews at tel.: (913) 551-7635 or e-mail at [matthews.mark@epa.gov](mailto:matthews.mark@epa.gov).

For EPA Region 8, contact Amy Clark at tel.: (303) 312-7014 or e-mail at [clark.amy@epa.gov](mailto:clark.amy@epa.gov).

For EPA Region 9, contact Eugene Bromley at tel.: (415) 972-3510 or e-mail at [bromley.eugene@epa.gov](mailto:bromley.eugene@epa.gov).

For EPA Region 10, contact Misha Vakoc at tel.: (206) 553-6650 or e-mail at [vakoc.misha@epa.gov](mailto:vakoc.misha@epa.gov).

## II. Background of Permit

### A. Statutory and Regulatory History

The Clean Water Act ("CWA") establishes a comprehensive program "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. 1251(a). The CWA also includes the objective of attaining "water quality which provides for the protection and propagation of fish, shellfish and wildlife and \* \* \* recreation in and on the water." 33 U.S.C. 1251(a)(2)). To achieve these goals, the CWA requires EPA to control discharges of pollutants from point sources through the issuance of National Pollutant Discharge Elimination System ("NPDES") permits.

The Water Quality Act of 1987 (WQA) added section 402(p) to the Clean Water Act (CWA), which directed EPA to develop a phased approach to regulate stormwater discharges under the NPDES program. 33 U.S.C. 1342(p). EPA published a final regulation in the **Federal Register**, often called the "Phase I Rule", on November 16, 1990, establishing permit application requirements for, among other things, "storm water discharges associated with industrial activity." See 55 FR 47990. EPA defines the term "storm water

discharge associated with industrial activity" in a comprehensive manner to cover a wide variety of facilities. See *id.* Construction activities, including activities that are part of a larger common plan of development or sale, that ultimately disturb at least five acres of land and have point source discharges to waters of the U.S. were included in the definition of "industrial activity" pursuant to 40 CFR 122.26(b)(14)(x). The second rule implementing section 402(p), often called the Phase II Rule, was published in the **Federal Register** on December 8, 1999. It requires NPDES permits for discharges from construction sites disturbing at least one acre but less than five acres, including sites that are part of a larger common plan of development or sale that will ultimately disturb at least one acre but less than five acres, pursuant to 40 CFR 122.26(b)(15)(i). See 64 FR 68722. EPA is proposing to issue this draft CGP under the statutory and regulatory authority cited above.

NPDES permits issued for construction stormwater discharges are required under Section 402(a)(1) of the CWA to include conditions to meet technology-based effluent limits established under Section 301 and, where applicable, Section 306. Effluent limitations guidelines (ELGs), and New Source Performance Standards (NSPS) are technology-based effluent limitations that are based on the degree of control that can be achieved using various levels of pollutant control technology as defined in Subchapter III of the CWA.

Once a new national standard is established in accordance with these sections, NPDES permits must incorporate limits based on such technology-based standards. See CWA section 301 and 306, 33 U.S.C. 1311 and 1316, and 40 CFR 122.44(a)(1). Prior to the issuance of such national standards, permit authorities are required to incorporate technology-based limits on a best professional judgment basis. CWA section 402(a)(1); 40 CFR 125.3(a)(2)(ii)(B). On December 1, 2009, EPA published final regulations establishing technology-based Effluent Limitations Guidelines (ELGs) and New Source Performance Standards (NSPS) for the Construction & Development (C&D) point source category. See 40 CFR Part 450, and 74 FR 62996 (December 1, 2009). The Construction & Development Rule, or "C&D rule", became effective on February 1, 2010; therefore all NPDES construction permits issued by EPA or states after this date must incorporate the C&D rule requirements. Because EPA will be issuing its new CGP after the effective date of the C&D rule, the

Agency is required by the CWA and 40 CFR 122.44(a)(1) to incorporate into its new CGP all applicable C&D rule requirements.

*B. Vacature of the C&D Rule Numeric Limit and Implications for This Permit*

The C&D rule was finalized on December 1, 2009, and included non-numeric requirements for erosion and sediment control, stabilization, and pollution prevention (*see* 40 CFR 450.21(a) thru (f)), and, for the first time, a numeric limitation on the discharge of turbidity from active construction sites (*see* 40 CFR 450.22). Since its promulgation, EPA discovered that the data used to calculate the numeric limit for turbidity were misinterpreted, and that it was necessary to recalculate the numeric limit.

On August 12, 2010, EPA filed a motion with the U.S. Court of Appeals for the Seventh Circuit, requesting the Court issue an order vacating and remanding to the Agency limited portions of the final C&D rule. To address the specific issues raised by petitioners, the motion also provided that EPA:

- “May address (and if necessary take further regulatory action on) certain impacts of the final rule specific to linear gas and electricity utility projects.”
- Will “solicit site specific information regarding the applicability of a numeric limit” to cold weather sites and to small sites that are part of a larger plan of development that is subject to the numeric limit.

On August 24, 2010, the U.S. Court of Appeals for the Seventh Circuit remanded the matter to EPA but did not vacate the numeric limit. On September 9, 2010, the National Association of Home Builders (NAHB) filed a motion for clarification (which EPA did not oppose) asking the Court to (1) vacate the limit and (2) hold the case in abeyance instead of remanding the matter to EPA. On September 20, 2010, the Court granted the motion in part by ruling to hold the matter in abeyance pending EPA consideration of the numeric limit and the other remand issues, but the Court did not vacate the numeric limit. Instead, the Court stated that “EPA may make any changes to the limit it deems appropriate, as authorized by law.”

EPA issued a direct final rule staying the current numeric limit and a companion proposed rule proposing a stay, and the stay took effect on January 4, 2011, resulting in an indefinite postponement of the implementation of the 280 NTU limit. The Agency is currently preparing to issue a proposed rule proposing the recalculated limit and a one-year extension to the first

phase-in date for complying with the numeric limit. EPA will seek public comment on this recalculated limit and the one-year extension of the first phase-in date, and persons who wish to comment on the recalculated limit and extension should submit comments on that proposal. EPA plans to promulgate the recalculated numeric limit and the one-year extension of the first phase-in date prior to the final issuance of the new CGP. Therefore, if the numeric limit and one-year extension are promulgated and become effective prior to the issuance of the final CGP, EPA must by law incorporate the applicable numeric limit and new first phase-in date from the ELGs and standards into the final CGP. With this in mind, EPA has included a placeholder reference to the final numeric limit, which will be replaced by the recalculated numeric limit in the final permit if it is promulgated prior to permit issuance. With respect to the first phase-in date for complying with the limit (*i.e.*, August 1, 2011), EPA notes in the proposed permit that this date may change depending on the outcome of the proposed extension.

### III. Summary of the Draft CGP

As stated above, the draft permit proposed today includes new requirements that implement the effluent limitations guidelines and new source performance standards in the C&D rule. These proposed new requirements would require site operators to install and implement stormwater measures to accomplish erosion and sediment control, pollution prevention, and stabilization, and, for certain larger construction sites, to meet a recalculated numeric turbidity limit and conduct compliance monitoring of their stormwater discharges. For sites that discharge to waters where additional controls are necessary to ensure compliance with applicable water quality standards, the draft permit includes new water quality-based effluent limits. This section summarizes the C&D rule requirements upon which the permit’s proposed technology-based requirements are based, and highlights the significant new permit provisions included in the draft permit.

#### A. Non-Numeric C&D Rule Requirements

The non-numeric effluent limitations in the C&D rule are designed to prevent the mobilization and discharge of sediment and sediment-bound pollutants, such as metals and nutrients, and to prevent or minimize exposure of stormwater to construction materials, debris, and other sources of pollutants

on construction sites. In addition, these non-numeric effluent limitations limit the generation of dissolved pollutants. For background, soil on construction sites can contain a variety of pollutants such as nutrients, organics, pesticides, herbicides, and metals. These pollutants may be present naturally in the soil, such as arsenic or selenium, or they may have been contributed by previous activities on the site, such as agriculture or industrial activities. These pollutants, once mobilized by stormwater, can detach from the soil particles and become dissolved pollutants. Once dissolved, these pollutants would not be removed by down-slope sediment controls. Source control through minimization of soil erosion is therefore the most effective way of controlling the discharge of these pollutants.

The non-numeric effluent limits in the C&D rule, upon which certain technology-based requirements in the draft CGP are based, include the following:

- *Erosion and Sediment Controls:* Permittees are required to design, install, and maintain effective erosion and sediment controls to minimize the discharge of pollutants. At a minimum, such controls must be designed, installed, and maintained to:
  1. Control stormwater volume and velocity within the site to minimize soil erosion;
  2. Control stormwater discharges, including both peak flowrates and total stormwater volume, to minimize erosion at outlets and to minimize downstream channel and streambank erosion;
  3. Minimize the amount of soil exposed during construction activity;
  4. Minimize the disturbance of steep slopes;
  5. Minimize sediment discharges from the site. The design, installation and maintenance of erosion and sediment controls must address factors such as the amount, frequency, intensity, and duration of precipitation, the nature of resulting stormwater runoff, and soil characteristics, including the range of soil particle sizes expected to be present on the site;
  6. To increase sediment removal and maximize stormwater infiltration, provide and maintain natural buffers around surface waters and direct stormwater to vegetated areas, unless infeasible; and
  7. Minimize soil compaction and, unless infeasible, preserve topsoil.

- *Soil Stabilization Requirements:* Permittees are required to, at a minimum, initiate soil stabilization measures immediately whenever any clearing, grading, excavating, or other earth disturbing activities have

permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 calendar days. Stabilization must be completed within a period of time determined by the permitting authority. In arid, semiarid, and drought-stricken areas where initiating vegetative stabilization measures immediately is infeasible, vegetative stabilization measures must be initiated as soon as practicable.

- **Dewatering Requirements:**

Permittees are required to minimize the discharge of pollutants from dewatering trenches and excavations. Discharges are prohibited unless managed by appropriate controls.

- **Pollution Prevention Measures:**

Permittees are required to design, install, implement, and maintain effective pollution prevention measures to minimize the discharge of pollutants. At a minimum, such measures must be designed, installed, implemented and maintained to:

1. Minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters. Wash waters must be treated in a sediment basin or an alternative control that provides equivalent or better treatment prior to discharge;

2. Minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste, and other materials present on the site to precipitation and to stormwater; and

3. Minimize the discharge of pollutants from spills and leaks and implement chemical spill and leak prevention and response procedures.

- **Prohibited Discharges:** The following discharges from regulated construction sites are prohibited:

1. Wastewater from washout of concrete, unless managed by an appropriate control;

2. Wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds, and other construction materials;

3. Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance; and

4. Soaps or solvents used in vehicle and equipment washing.

- **Surface Outlets:** When discharging from basins and impoundments, permittees are required to utilize outlet structures that withdraw water from the surface, unless infeasible.

When EPA was writing the C&D rule's final non-numeric effluent limits listed above, it intended to provide discretion to permitting authorities to determine

how best to implement these provisions with respect to requiring controls and measures appropriate for the conditions in their permitted areas. For example, in the preamble to the C&D rule, EPA states “\* \* \* in the erosion and sediment control section \* \* \* EPA simply required that permittees ‘minimize the disturbance of steep slopes’ leaving it up to the permitting authority to determine the specific requirements applicable to owners or operators of C&D sites to minimize disturbance of steep slopes in order to minimize the discharge of pollutants from the site.” See 74 FR 63016. As the permitting authority responsible for issuing stormwater permits for construction activities in four States, Indian Country lands, Federal facilities, Washington, DC, and U.S. territories/ protectorates, EPA believes that it is important in this draft permit to include requirements that more specifically define what is necessary to implement each of the C&D rule's non-numeric limits. Accordingly, in translating the C&D rule requirements into the draft CGP, EPA added specificity to many of the C&D rule provisions that it believed call for further definition, such as the requirements to “Provide and maintain natural buffers”, “Minimize steep slopes”, and “Minimize soil compaction”, among others. In EPA's view, adding specificity to the C&D rule-based requirements in the CGP will assist permittees in understanding the Agency's view of what is required to comply with the permit.

#### **B. Numeric C&D Rule Requirements**

The C&D rule at 40 CFR 450.22 requires compliance for certain sites with a numeric turbidity limit. Compliance with the numeric turbidity limit is to be accomplished in two phases and applies to construction activities as follows:

- Any construction activities that will occur on or after August 1, 2011, which disturb 20 or more acres of land at one time, including non-contiguous land disturbances that take place at the same time and are part of a larger common plan of development or sale; and

- Any construction activities that will occur on or after February 2, 2014, and disturb 10 or more acres of land at one time, including non-contiguous land disturbances that take place at the same time and are part of a larger common plan of development or sale.

See 40 CFR 450.22(a). The C&D rule established an exception from the numeric limit for sites that receive an amount of precipitation that in any day is larger than the local 2-year, 24-hour storm. See 40 CFR 450.22(b). In addition

to promulgating a numeric limit, the C&D rule also requires monitoring consistent with requirements established by the permitting authority. See 40 CFR 450.22(a)(2). The rule specifies that each sample must be analyzed for turbidity in accordance with the requirements established by the permitting authority. See *id.*

As stated previously, the 280 NTU numeric limit that was originally promulgated has been found to be based on data that was misinterpreted. EPA has issued a stay of the 280 NTU numeric limit, which indefinitely postpones the application of this limit in permits. EPA also intends to propose and finalize a recalculated numeric limit. In accordance with the Agency's plan, once a recalculated limit and extension of the first phase-in date are promulgated, they would replace the 280 NTU limit and the August 1, 2011 phase-in date, respectively. Assuming the stay of the 280 NTU limit is in effect, the CWA does not require states whose construction stormwater permits expire prior to the promulgation of the new, corrected numeric limit to include the stayed numeric limit of 280 NTU in their construction stormwater permit. However, if any state permits expire after the effective date of a final rule containing the recalculated numeric limit, those states would be required under the CWA to incorporate the new numeric effluent limit into their construction stormwater permits.

The draft permit implements the numeric effluent limit provisions of the C&D rule by including provisions explaining which sites are required to comply with the numeric limit and the two phase-in dates for compliance (while noting the possibility that the first phase-in date may change), the exceptions where the numeric limit does not apply, sampling and analysis requirements for compliance monitoring, and requirements to report sampling data to EPA. The draft permit includes a placeholder reference for the actual numeric limit itself, which EPA plans to promulgate prior to the expiration of the 2008 CGP, so that the numeric limit may be incorporated into the new CGP prior to issuance.

#### **C. Water Quality-Based Effluent Limits**

Because the C&D rule requirements are technology-based, they do not account for the level of pollutant control that may be necessary in a specific area to meet applicable water quality standards. EPA's regulations at 40 CFR 122.44(d)(1) require permitting authorities to include additional or more stringent permit requirements when necessary to achieve water quality

standards. With this requirement in mind, the draft CGP includes additional requirements that apply to those sites that discharge to waters impaired for sediment, sediment-related parameters, or nutrients, including nitrogen and phosphorus, which are parameters typically associated with stormwater discharges from construction sites, and to those sites that discharge to waters requiring enhanced protection under a State or Tribe's antidegradation requirements.

#### *D. Summary of Significant Proposed Changes to the CGP*

The draft CGP includes a number of new or modified requirements, many of which are related to the implementation of the new C&D rule effluent limits, and thus differ from the 2008 CGP. The following list summarizes the proposed changes to the CGP:

1. *Structure/Appearance of Permit:* EPA attempted to restructure its CGP so that it would be better organized to present requirements in a generally more readable manner. It is EPA's hope that this structure will enhance the permittees' understanding of and compliance with the permit's requirements. For instance, the permit's stormwater control requirements are organized into distinct and related categories, such as erosion and sediment control requirements, stabilization requirements, and pollution prevention requirements. Within the erosion and sediment control requirements of the permit, EPA has organized the section to reflect the general sequence of the construction process. For example, the proposed permit places in separate sections requirements that apply to the site planning phase, which should occur prior to earth-disturbance, followed by requirements affecting the selection, design, and installation of stormwater controls. Similarly, in the pollution prevention section, EPA organizes the requirements based on where in the construction sequence they would apply. Therefore, there are requirements relating to (1) where pollution-generating activities may be placed, (2) how to design stormwater controls, (3) what performance standards to meet during construction, and (4) how to maintain required stormwater controls.

2. *Eligibility for Emergency-Related Construction:* EPA proposes to provide immediate authorization for construction activities required for response to public emergencies (e.g., tornado, hurricane, flooding). Immediate authorization would enable work that is necessary to avoid imminent endangerment to human health or the environment to proceed

without administrative delay. The construction operator must still comply with the terms of the permit, and must submit an NOI within 7 days of commencing earth-disturbing activities, whereas typically operators must submit NOIs 30 days prior to commencing earth-disturbing activities. The operator is then required to develop its stormwater pollution prevention plan (SWPPP) within 7 days of submitting the NOI.

3. *Authorization Process/NOIs:* EPA proposes to increase the "waiting period" from 7 days to 30 days for new projects. This new timeframe is intended to better reflect the endangered species-related reviews that must take place prior to authorization. EPA also proposes to maximize the use of its electronic NOI, or eNOI, process for authorizing construction discharges by requiring that construction operators seek coverage using the eNOI system. Certain case-by-case exceptions, i.e., instances in which a "paper NOI" will be allowed, will still exist, but approval by the applicable EPA Region will be necessary first.

4. *Sediment and Erosion Controls:* The draft permit includes specific requirements that implement the C&D rule's sediment and erosion control limits. While many of these requirements are already included in the 2008 CGP, the draft permit includes more detail in order to properly implement the C&D rule. The following is a list of requirements that can be considered significant modifications to the 2008 CGP:

i. *Buffer Compliance Alternatives—*To implement the C&D rule requirement to provide and maintain natural buffers around surface waters, unless feasible, sites must ensure that any discharges flowing through the area between the disturbed portions of the site and any waters of the U.S. are treated by an area of undisturbed natural vegetation that alone or supplemented by erosion and sediment controls achieves a reduction in sediment loads equivalent to that achieved by 50 feet of undisturbed natural vegetation. Appendix M of the draft permit has been added to provide guidance to operators in complying with this requirement.

ii. *Installation of Sediment Controls Prior to Construction—*Operators must install and make operational all sediment controls prior to conducting earth-disturbing activities.

iii. *Sediment Removal Requirements—*Operators are specifically required to remove deposited sediment on the site, tracked out of the site, or accumulated near sediment controls before it compromises

the effectiveness of on-site controls and/or is discharged to surface waters.

iv. *Entrance and Exit Points—*Any entrance and exit points created on the site must be stabilized for a minimum of 50 feet into the site.

v. *Storm Drain Inlets—*Controls must be installed and maintained to protect any storm drain inlets to which the site discharges and that are accessible to the operator.

vi. *Chemical Treatment—*Where operators plan to employ treatment chemicals to reduce sediment discharges, they are subject to specific use restrictions and stormwater control design requirements.

vii. *Dewatering Practices—*Specific controls and discharge restrictions apply to sites that will discharge groundwater or accumulated stormwater removed from excavations, trenches, foundations, vaults, or other points of accumulation associated with construction activity.

5. *Stabilization Requirements:* The permit includes modified stabilization requirements that define more specifically what EPA requires for temporary and final stabilization. Criteria are proposed for both vegetative and non-vegetative stabilization that are based on the Revised Universal Soil Loss Equation's (RUSLE) cover management factor, or "C-factor". EPA has provided guidance in Appendix H to assist permittees in understanding what stabilization measures meet the requirements of the draft permit.

6. *Pollution Prevention:* Beyond adopting the specific C&D rule requirements for pollution prevention and the prohibition of certain discharges, the draft permit includes specific location restrictions (e.g., locate pollutant-generating activities outside of any buffers established under the permit and set back from stormwater conveyance channels) and design standards (e.g., install secondary containment or cover activities). The pollution prevention requirements also include a proposal to restrict the discharge of fertilizers at construction sites.

7. *Numeric Turbidity Limit:* EPA proposes that it will include whatever numeric turbidity limit is effective under the C&D rule, at the time of final permit issuance, as well as applicability (i.e., phase-in dates), sampling, and reporting requirements.

8. *Water Quality-Based Effluent Limits:* The draft permit includes specific requirements that apply to sites discharging to waters impaired for common pollutants associated with construction activities, such as sediment and nutrients. For such sites,

construction activities are subject to additional requirements, including tighter stabilization deadlines (immediately initiate stabilization if construction in an area is inactive for 7 days, as opposed to 14 days) and more frequent site inspections. For sites disturbing 10 or more acres at a time, the permittees would be subject to the additional requirement to conduct benchmark monitoring of their discharge based on benchmarks that are tied to the receiving water's water quality criteria. The permit also proposes to include additional requirements for waters identified as Tier 2, Tier 2.5, or Tier 3 for antidegradation purposes.

9. *Site Inspections*: EPA proposes to make explicit the requirement for permittees to visually assess the quality of the discharge (e.g., color, odor, floating, settled, or suspended solids) if the site inspection occurs during a discharge-generating rain event.

10. *Corrective Actions*: Although the 2008 CGP requires corrective action, it does not include specific requirements instructing the permittee as to what conditions trigger specific corrective actions and what deadlines apply. The draft permit includes specific triggering conditions for corrective action as well as deadlines to fix such problems and document what was done.

11. *Stormwater Pollution Prevention Plan (SWPPP)*: The SWPPP requirements are modified in accordance with the proposed changes discussed above. In general, the requirements are more specific, but consistent with the current permit.

12. *Notice of Termination*: EPA proposes to include additional requirements that affect when a site may terminate coverage under the CGP. For instance, beyond enabling sites to terminate coverage when earth-disturbing activities have stopped and the site is stabilized, the permit would require the removal of all temporary stormwater controls and construction materials, waste, and waste handling devices.

#### *E. Permit Provisions for Which EPA is Soliciting Comment*

While EPA encourages the public to review and comment on all provisions of the draft permit, EPA has included in the body of the draft CGP several specific requirements on which it requests feedback. The following list summarizes these specific requests for comment, and where they are included in the permit:

1. How to submit your NOI—Request for comment on the transition to a

“paperless” NOI system for the CGP. Part 1.5.2.

2. Natural buffers and equivalent sediment controls—Request for comment on the buffer compliance alternatives. Part 2.1.2.1.

3. General design requirements/required design factors—Request for comment on the concept, not included in the proposal, to adopt a minimum design storm standard for designing stormwater controls. Part 2.1.3.1.a.

4. Install stormwater controls before construction starts—Request for comment on whether there are situations in which it would be infeasible or impracticable to make operators install all stormwater controls before commencing earth disturbances. Part 2.1.3.2.a.

5. Stabilize construction entrance and exit points—Request for comment on the feasibility of stabilizing entrance and exit points for a minimum of 50 feet. Part 2.1.4.1.a.

6. Chemical treatment—Request for comment on the draft permit's restrictions on the use of polymers, flocculants, or other treatment chemicals to enhance sediment removal. Part 2.1.4.6.

7. Deadline to complete stabilization activities—Request for comment on the practicability of the stabilization timeframes. Part 2.2.1.2.

8. Stabilization deadlines for arid/semi-arid areas and sensitive areas—Request for comment on the proposed deadlines for initiating and completing stabilization of exposed areas of the site in arid and semi-arid areas. EPA also requests comment on treating as a sensitive area for stabilization purposes sites that will conduct construction activities in critical habitat areas or areas where listed endangered species exist. Part 2.2.1.4.

9. Criteria for stabilization/vegetative stabilization—Request for comment on whether the C-factor stabilization criteria should be used as the sole option for complying with the permit's stabilization requirements, as opposed to allowing, as the draft permit does, permittees to choose either the C-factor method or the 70 percent areal cover approach. Part 2.2.2.1.

10. Pollution prevention standards for fueling and maintenance of equipment and vehicles—Request for comment on the practicability of providing secondary containment or cover for fueling and maintenance areas on the site. Part 2.3.2.1.b.

11. Pollution prevention standards for staging and storage areas—Request for comment on the practicability of providing secondary containment or

cover for staging and storage areas on the site. Part 2.3.2.3.b.

12. Types of discharge conditions requiring sampling—Request for comment on whether the permit should include a minimum rainfall amount below which no sampling is required. Part 3.3.1.1.

13. Sampling frequency—Request for comment on the sampling frequency specified, and on the alternative option of requiring samples to be taken once every 2 hours following the first sample. Part 3.3.2.

14. Sampling location—Request for comment on whether the permit should allow representative samples for other types of construction projects. Part 3.3.3.4.

15. Actions required if you violate the numeric turbidity limit—Request for comment on whether the permit should require immediate notification of EPA for extremely high turbidity levels. Part 3.3.8.

16. Reporting turbidity sample results to EPA—Request for comment on whether allowances should be made in the permit for quarterly reporting for sites that have not exceeded the turbidity limit. Part 3.3.9.

17. Discharge limitations for impaired waters—Request for comment on the way in which this permit determines whether there is a discharge to impaired waters. Part 4.2.

18. Requirements for discharges to sediment or nutrient-impaired waters without an EPA-approved or established TMDL/water quality benchmark monitoring—Request for comment on whether benchmark monitoring is an appropriate tool for assessing the effectiveness of controls in not contributing to impairments, and request for comments on the 10-acre threshold for requiring sites to conduct benchmark monitoring. EPA also requests comment on how benchmark monitoring might be used for discharges to waters that are habitat for listed fish species (e.g., white sturgeon, sockeye salmon). Part 4.2.2.1.

19. Daily visual examination—Request for comment on the appropriateness of daily visual examinations. Part 4.2.2.3.b.

20. Requirements for discharges to sediment or nutrient-impaired waters without an EPA-approved or established TMDL—Request for comment on the proposed additional requirements on sites discharging to sediment or nutrient-impaired waters. Also request for comment on whether the focus should be expanded to cover certain biological impairments attributable to sediment or nutrients. Part 4.2.2.



21. Requirements for inspections—Request for comment on the proposed application of the same inspection requirements for linear projects as to other types of construction projects. Part 5.1.4.

22. Residual chitosan testing—Request for comment on whether there is a level of chitosan residual below which corrective action would not be necessary. Part 6.3.1.3.

23. Requirement to install and make operational corrective action stormwater controls—Request for comment on whether the 7-day timeframe is feasible. Part 6.3.2.4.

24. Reporting to EPA—Request for comments on whether the deadline for reporting to EPA is reasonable, or whether a different deadline is more appropriate. Part 6.6.

25. Person(s) responsible for developing SWPPP—Request for comment on whether the owner of the site should bear the initial requirement to develop the SWPPP. Part 8.1.2.

26. Turbidity benchmarks—Request for comment on how the proposed methodology used to establish benchmarks for waters impaired for turbidity for which the underlying water quality criterion is based on natural background levels of turbidity. Appendix J.

#### F. Construction Projects Eligible for Permit Coverage

This draft permit provides coverage to eligible operators of “new sources”, “existing permitted dischargers”, “existing unpermitted dischargers”, “new operators of new sources and existing permitted dischargers”, and “emergency-related projects.” Although the existing 2008 CGP will have expired, existing permitted dischargers authorized under that permit will continue to be authorized to discharge under that permit, in accordance with EPA’s regulations at 40 CFR 122.6, for a period of 90 days after the issuance of the new permit. Within 90 days of the issuance of the new CGP, owners/operators of permitted ongoing projects must submit a complete Notice of Intent (NOI) for coverage under the new permit. New operators of new sources or existing permitted dischargers that were authorized under the existing 2008 permit prior to its expiration date must submit a complete NOI for coverage under the new permit a minimum of 30 days prior to the date that the transfer will take place to the new owner/operator. Operators of emergency-related projects are required to submit their completed NOIs within 7 days of commencing earth-disturbing activities.

#### G. Geographic Coverage

This permit provides coverage for stormwater discharges from construction activities that occur in areas not covered by an approved State NPDES program. The areas of geographic coverage of this permit are listed in Appendix B, and include the States of New Hampshire, Massachusetts, New Mexico, and Idaho as well as all Indian Country lands, and federal facilities in selected states. Permit coverage is also provided in Puerto Rico, the District of Columbia, and the Pacific Island territories. The only changes to the current permit’s area of coverage is that Indian Country lands in Region 4 are now added to the draft permit’s area of coverage, and due to a phased delegation of the NPDES program to the State of Alaska starting in late 2008, EPA now retains NPDES permitting authority only for discharges occurring within the Denali National Park and Preserve, and in Indian Country located within the State of Alaska.

#### IV. Notice of Intent To Prepare an Environmental Assessment (EA) for the National Pollutant Discharge Elimination System (NPDES) General Permit for Discharges From Large and Small Construction Activities

Pursuant to the National Environmental Policy Act (NEPA) (42 U.S.C. 4321–4307h), the Council on Environmental Quality’s NEPA regulations (40 CFR Part 15), and EPA’s regulations for implementing NEPA (40 CFR Part 6), EPA plans to prepare an Environmental Assessment (EA) to analyze the potential environmental impacts of the new CGP. The EA will consider the potential environmental impacts from the discharge of pollutants in stormwater discharges associated with construction activity where EPA is the permitting authority to determine whether to prepare an Environmental Impact Statement (EIS).

This notice initiates the scoping process by inviting comments from Federal, State, and local agencies, Indian tribes, and the public to help identify the environmental issues and reasonable alternatives to be examined in the EA. The scoping process will inform the preparation and issuance of the draft/preliminary EA, which will be made available for public comment.

To ensure that EPA has an opportunity to fully consider your comments and to facilitate EPA’s prompt preparation of the EA, scoping comments should be received on or before May 25, 2011. You may submit scoping comments to the Docket ID No.

EPA–HQ–OW–2010–0782 by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments by clicking on “Help” or “FAQs.”

- *Mail:* U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Mail Code: 2252A, Washington, DC 20460.

- *Courier:* U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Rm # 7241C, Washington, DC 20004, between 9 a.m. and 5 p.m. Eastern time, Monday through Friday, except Federal holidays.

- *Fax:* 202–564–0072.

*For further information regarding scoping contact:* Jessica Trice, NEPA Compliance Division, Office of Federal Activities, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Mail Code: 2252A, Washington, DC 20460. *Telephone:* (202) 564–6646.

#### V. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this draft CGP will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. The permit provisions in this permit include new requirements for erosion and sediment control and pollution prevention, and result in an increase in the level of environmental protection. The requirements in this permit apply equally to all construction projects that disturb one or more acres in areas where EPA is the permitting authority, and therefore do not disproportionately and adversely affect minority or low-income populations.

## VI. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

In compliance with Executive Order 13175, EPA is in the process of consulting with tribal officials to gain an understanding of and, where necessary, to address the tribal implications of the draft CGP. In the course of this consultation, EPA plans to undertake the following activities:

1. Provide education and outreach on the draft CGP;
2. Hold national conference call(s) to discuss issues and concerns of the tribes and document discussions held in this call;
3. Solicit comment on the draft permit; and
4. Provide feedback through a written communication explaining how tribal issues and concerns were considered in the final action. This communication will be completed and made available to the tribes at the same time the permit is promulgated and the other responses to the comments are published.

**Authority:** Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: April 12, 2011.

**H. Curtis Spalding,**  
*Regional Administrator, EPA Region 1.*

Dated: April 12, 2011.

**Carl-Axel P. Soderberg,**  
*Division Director, Caribbean Environmental Protection Division, EPA Region 2.*

Dated: April 12, 2011.

**Kevin Bricke,**  
*Acting Director, Division of Environmental Planning & Protection, EPA Region 2.*

Dated: April 12, 2011.

**Jon M. Capacasa,**  
*Director, Water Protection Division, EPA Region 3.*

Dated: April 12, 2011.

**Douglas Mundrick,**  
*Acting Director, Water Protection Division, EPA Region 4.*

Dated: April 12, 2011.

**Tinka G. Hyde,**  
*Director, Water Division, EPA Region 5.*

Dated: April 12, 2011.

**Miguel I. Flores,**  
*Director, Water Quality Protection Division, EPA Region 6.*

Dated: April 12, 2011.

**Jamie Green,**  
*Acting Director, Water, Wetlands and Pesticides Division, EPA Region 7.*

Dated: April 11, 2011.

**Stephen S. Tuber,**  
*Assistant Regional Administrator, EPA Region 8.*

Dated: April 11, 2011.

**Alexis Strauss,**  
*Director, Water Division, EPA Region 9.*

Dated: April 11, 2011.

**Michael A. Bussell,**  
*Director, Office of Water and Watersheds, EPA Region 10.*

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL-9297-8; EPA-HQ-OW-2008-0238]

### Modification to 2008 National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharges Associated with Construction Activities

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA Regions 1, 2, 3, 5, 6, 7, 8, 9, and 10 propose to modify the 2008 National Pollutant Discharge Elimination System (NPDES) general permits for stormwater discharges associated with construction activity in order to extend until January 31, 2012 the expiration date of the permit. Hereinafter, these NPDES general permits will be referred to as “permit” or “2008 construction general permit” or “2008 CGP.” This proposed modification would, if finalized, extend the three-year permit so that it expires on January 31, 2012 instead of June 30, 2011. Prior to this proposed extension, EPA modified the 2008 CGP in January 2010 to extend the permit by one year, thus making it a three-year permit. By Federal law, no NPDES permit may be issued for a period that exceeds five years.

**DATES:** EPA is proposing a modification to its 2008 CGP that would extend the permit until January 31, 2012. If the proposed modification is finalized, the 2008 CGP would expire on midnight, January 31, 2012, instead of June 30, 2011. Comments on EPA’s proposal must be postmarked by May 25, 2011.

**FOR FURTHER INFORMATION CONTACT:** Greg Schaner, Water Permits Division, Office of Wastewater Management (Mail Code: 4203M), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., EPA East, Washington, DC 20460; telephone number: (202) 564-0721; fax number: (202) 564-6431; email address: [schaner.greg@epa.gov](mailto:schaner.greg@epa.gov).

## SUPPLEMENTARY INFORMATION:

### I. General Information

#### A. Does this action apply to me?

If a discharger chooses to apply for coverage under the 2008 CGP, the permit provides specific requirements for preventing contamination of waterbodies from stormwater discharges from the following construction activities: