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Environmental Viewpoint

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EPA Issues NPDES 2012 Construction General Permit

The Clean Water Act's federal permitting program that controls point-source discharges to waters of the United States is called the National Pollutant Discharge Elimination System (NPDES). The NPDES program regulates stormwater discharges from construction activities that disturb one or more acres, or smaller sites that are part of a larger development or sale that will ultimately disturb one or more acres. Typical construction activities that trigger discharges are grading, clearing, excavating, and stockpiling. Contractors must obtain a NPDES permit prior to commencing construction activities. The Environmental Protection Agency (EPA) currently maintains NPDES permitting authority in Massachusetts, New Hampshire, Idaho and New Mexico as well as other federal facilities and U.S. territories. The EPA administers its authority through a Construction General Permit (CGP). The EPA's 2008 CGP expired on February 15, 2012, and the final 2012 CGP became effective upon its issuance on February 16, 2012 for a five (5) year period.



The EPA lists the following as the major differences between the 2012 CGP and the 2008 CGP:

- Eligibility for emergency-related construction;
- Ineligibility for coverage under CGP where cationic treatment chemicals will be used, unless specific authorization is provided by EPA;
- Increased usage of the electronic Notice of Intent process;

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- Increased review period from 7 days to 14 days for operators seeking permit coverage;
- Sediment and erosion controls;
- Natural buffers or alternative controls;
- Soil stabilization;
- Pollution prevention;
- Water quality-based effluent limits;
- Site inspections;
- Corrective action;
- Stormwater Pollution Prevention Plans (SWPPPs); and
- Permit termination.¹

Any new project, existing project, or new operator of an existing project must file for a Notice of Intent (NOI) within the deadlines set forth in the new permit. The 2012 CGP now requires all submissions through the EPA's electronic NOI system, which is available through (<http://cfpub.epa.gov/npdes/stormwater/cg-penoi.cfm>) and is known as "eNOI" unless a paper submission is approved by the EPA.

The 2012 CGP revises the definition of "Operator" and includes explicit language that subcontractors are not typically operators under the permit. The 2012 CGP will also allow construction projects that are in response to a public emergency (defined in the permit to include natural disaster or widespread disruption to essential public services) to commence construction activities as long as a NOI and Stormwater Pollution Prevention Plan (SWPPP) are filed within thirty (30) days of such commencement.

The 2012 CGP incorporates a majority of the EPA's technology-based Effluent Limitation Guidelines and New Source Performance standards ("Effluent Limitations Guidelines") that were issued for the construction and development industry on December 1, 2009. While the new permit is reported to increase contractor's reporting requirements and potentially implementation costs, the more stringent numeric turbidity limit for larger construction sites from the Effluent Limitations Guidelines were stayed by the EPA on January 4, 2011 and are not included in the 2012 CGP. The Effluent Limitations Guidelines that were incorporated refer to: "Erosion and Sediment Controls; Soil Stabilization, Dewatering, Pollution Prevention Measures, Prohibited Discharges and Surface Outlets."²

The final permit implements the Effluent Limitations Guidelines by providing detailed standards for erosion and sediment control requirements. For instance, natural buffers must be maintained around surface waters unless infeasible. The permit requires a natural buffer or equivalent sediment control when a surface water is within 50 feet of the earth disturbance.

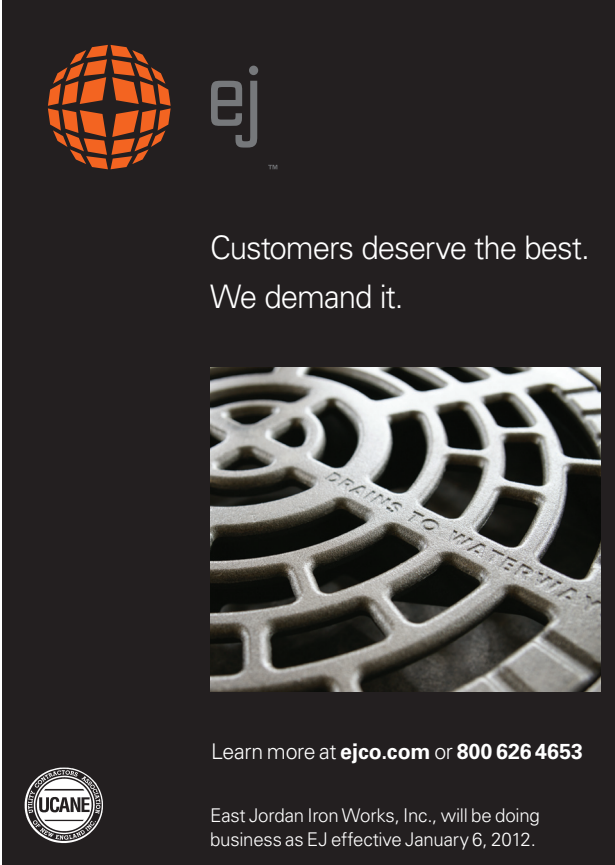
The foregoing is a general discussion of some of the overarching changes in the 2012 CGP, however, to insure compliance with the 2012 CGP a thorough review of the permit's new requirements should be revised in detail prior to submitting a NOI.³ The EPA held a webcast on March 15, 2012, with an overview of the new permit's requirements. For more information go to http://cfpub.epa.gov/npdes/outreach.cfm?program_id=0&otype=1. The EPA is also updating the SWPPP Template, SWPPP guide and updated inspection report template to include the 2012 CGP requirements.⁴ ■

¹ http://www.epa.gov/npdes/pubs/cgp2012_qanda.pdf

² See EPA Fact Sheet, EPA Issues 2012 General Permit for Stormwater Discharges from Construction Activities, February 2012.

³ http://www.epa.gov/npdes/pubs/cgp2012_finalpermit.pdf

⁴ <http://cfpub.epa.gov/npdes/stormwater/swppp.cfm>



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