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## ***NAHB Action Alert: EPA Finalizes 2017 Construction General Permit***

*On January 11, 2017, EPA issued the 2017 Construction General Permit (CGP). The 2017 CGP takes effect on February 17, 2017, and will stay active for 5 years.*

### **Background**

- EPA's CGP, although applicable in only New Mexico, Idaho, Massachusetts and New Hampshire and other limited jurisdictions, it serves as a model for most states in developing their own construction stormwater requirements.
- Both developers and builders must seek coverage under the Construction General Permit (CGP) for active construction that disturbs more than one acre, or less than one acre within a larger common plan of development.

### **NAHB Engagement on the 2017 CGP**

- NAHB submitted [detailed comments](#) on EPA's 2017 draft Construction General Permit (CGP) on May 26, 2016.
- HBAs from four states testified directly to EPA over early concerns with the permit. NAHB received over 30 comments from individual members and worked closely with EPA over the last six months to communicate detailed industry response to this proposal. NAHB Land Development and Environmental Issues Committee members met earlier this year to discuss problems in detail and propose solutions.
- NAHB recently met with the White House Office of Management and Budget (OMB) to represent construction industry concerns. This conversation focused on potential costs of new expanded liability provisions under this permit (see below).

### **Good news – Wins for builders**

- **EPA acknowledged, for the first time, that individual details of a SWPPP are not directly enforceable.** Thanks to new clarifying language in EPA's 2017 CGP, enforcement is now much clearer under this permit. Within Section 7 EPA emphasizes that SWPPPs are intended to serve as a flexible "external tool" to carry out permit responsibilities, and that the SWPPP itself does not create new permit terms or conditions or, "*establish the effluent limits that*

*apply to your site’s discharges”* (Permit, page 26). NAHB is thrilled that EPA listened to builders concerns; clarifying years of confusion in the field over whether or not individual specifications in a site’s pollution prevention plan create or equate to permit limits. Under the new language, SWPPP documents must still meet minimum criteria outlined in Section 7 of EPA’s permit, and must still be updated regularly to reflect changing site conditions.

- **EPA will not require builders to publish SWPPPs publicly online.** NAHB members worked with EPA to explain in detail the many costs and risks associated with uploading large, complex documents containing detailed site data without a proper system for screening confidential business information. In response, EPA’s 2017 permit kept public transparency provisions the same as in the 2012 permit – builders must store a copy of their SWPPP onsite and be prepared to pass on to EPA for public inspection upon request.
- **EPA dropped plans to require “joint” SWPPPs for builders within the same common plan of development.** Again, EPA was reasonable on this issue as well, listening to case studies presented from New Mexico HBA and other NAHB affiliates who used real word examples to demonstrate that coordinating site compliance documents between multiple firms for months, even years would be next to impossible.
- **EPA withdrew new confusing additions to the Notice of Intent (NOI) compliance form.** Additions asking builders to identify multiple outfall latitudes and longitudes, as well as acres of impervious surface were removed from the draft CGP NOI EPA presented earlier this year.

### **Major Changes to Liability for Sites with Multiple Operators**

- **Expanded liability provision poses problems for builders on sites with multiple operators.** Despite protest from NAHB and other industry groups, EPA introduced controversial language in the 2017 CGP that considers all builders on shared sites “jointly and severally liable” for compliance with permit terms, including failures of “shared” treatment ponds and other features receiving flow from multiple properties. NAHB filed comments arguing this type of liability framework is illegal, since operators often work on a site at different times, and cannot legally or physically control the activities of others. This provision could have devastating effects for single family home builders in particular, since even the smallest of sites could be at risk for neighboring CWA violations ringing in at over \$50,000/day, regardless of whether the operator is in compliance with all permit terms within their

property limits. NAHB plans to work through all possible avenues to challenge this decision.

### **Other changes in EPA’s 2017 CGP**

- Operators must post a sign or notice informing the public on how to contact EPA to obtain a copy of the SWPPP, and how to contact EPA if stormwater pollution is observed.
- Tighter stabilization timelines for sites choosing to disturb more than five acres at once. EPA heeded calls by environmental groups to further restrict stabilization timelines by incentivizing larger sites to phase their operations and disturb only up to 5 acres at any one time. Those sites disturbing more than five acres at once must adhere to a stricter 7-day (rather than 14 day) stabilization schedule.
- Regarding inspection frequency, EPA’s 2012 language presenting a choice between weekly inspection and biweekly inspection was retained. Operators have the option to either (1) conduct a site inspection once every seven (7) calendar days; or (2) conduct a site inspection once every 14 days and within 24 hours of the occurrence of a storm event of 0.25 inches or greater. New to this requirement is a provision requiring those operators choosing the 14-day timeline to inspect after occurrence of runoff from snowmelt “sufficient to cause a discharge”.
- Prohibition against non-stormwater discharges of external building washdown waters containing hazardous substances, such as paint or caulk containing polychlorinated biphenyls (PCBs).
- Requirements for cover or “other appropriate temporary stabilization” for all inactive piles that will be unused for 14 or more days.
- Waste container lids must be kept closed when not in use at the end of the business day. For those containers that do not have lids, operators must provide cover or “similarly effective means” to minimize discharge of pollutants.
- For sites discharging to polychlorinated biphenyl-(PCB) impaired waters, operators must minimize the exposure of any building materials containing PCBs to precipitation and stormwater.

### **Getting ready for move from eNOI to Net-CGP System**

- *For operators of existing sites:* If you are an operator of a site with 2012 CGP coverage where construction activities commenced prior to February 16, 2017, you are required to submit a new NOI for coverage under the 2017

CGP using NeT-CGP by May 17, 2017. You are not required to submit an NOT to terminate coverage under the 2012 CGP.

- For more information and training materials, access EPA's website:  
<https://www.epa.gov/npdes/stormwater-discharges-construction-activities-2017-cgp#ereporting>

*NAHB will continue to analyze the new permit and report on any developments.*

**Further NAHB Resources:**

*NAHB Final Comments: EPA's Proposed 2017 CGP:*

<http://www.nahb.org/~media/1B40E1085F514C9CA0F752E27CD28FE0.ashx>

**EPA Resources:**

*EPA's 2017 Construction General Permit and Related Documents:*

<https://www.epa.gov/npdes/epas-2017-construction-general-permit-cgp-and-related-documents>

**Questions?**

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