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2022 NPDES General Permit for Stormwater Discharges from Construction Activities: U.S. Environmental Protection Agency Federal Register Notice Issuing Final Permit Renewal

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The United States Environmental Protection Agency (“EPA”) published a January 24th Federal Register notice for its 2022 Clean Water Act National Pollution Discharge Elimination System (“NPDES”) general permit for stormwater discharges from construction activities (“Construction Permit”). See 87 Fed. Reg 3522.

The Construction Permit is a general permit (as opposed to an individual permit) utilized by EPA to address stormwater discharges associated with certain construction activities involving clearing, excavating, and grading that disturbs the land.

The 2022 EPA Construction Permit is utilized in states that do not have primacy for the Clean Water Act program. Arkansas has been authorized to administer the NPDES Construction Stormwater permitting program for many years. As a result, the 2022 EPA Construction Permit is not applicable in this state. 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.

A Clean Water Act permit is required for stormwater discharges from any construction activities disturbing:

- One acre or more of land,
- Less than one acre of land but that is part of a common plan of development or sale that will ultimately disturb one or more acres of land.

Construction activity includes earth-disturbing activities that involve clearing, grading, and excavating land and other construction-related activities that could generate pollutants.

The 2022 Construction Permit will become effective on February 17th. It replaces the 2017 Construction Permit.

EPA describes the changes in the 2022 Construction Permit from the prior 2017 Construction Permit as generally falling into one of two categories:

1. Changes to improve the clarity of the permit
2. Changes that add specificity to the permit requirements

The changes that are stated to be intended to improve clarity include:

- Approved stormwater control and stormwater pollution prevention plan products
- Differentiate between routine maintenance and corrective action
- Include additional stormwater control design considerations
- Clarify factors where infiltration would be infeasible or inadvisable
- Clarify application of perimeter control and natural buffer requirements
- Clarify the permit flexibilities for arid and semi-arid areas
- Clarify pollution prevention requirements for construction waste
- Clarify proper handling of washing applicators and containers used for stucco, paint, concrete, form release oils, curing compounds, or other materials
- Clarify requirements for inspections during storm events
- Availability of stormwater pollution prevention plan (SWPPP), inspection reports, and corrective action log in electronic form
- Updated process for Endangered Species Act eligibility determinations

The changes that are stated to be intended to add specificity to the Construction Permit requirements include:

- Include additional perimeter control installation and maintenance requirements
- Update pollution prevention requirements for chemicals used and stored on site
- Specify new dewatering discharge requirements
- Require turbidity benchmark monitoring for sites discharging dewatering water to sensitive waters
- Update training requirements for personnel conducting site inspections
- Specify requirements for documenting signs of sedimentation attributable to construction site discharges
- Require photo documentation of adequate site stabilization
- Add new Notice of Intent (NOI) questions

A copy of the Federal Register notice can be downloaded [here](#).