

EPA ANNOUNCES NEW DRAFT CONSTRUCTION GENERAL PERMIT

Stormwater Permit News

BOSTON – The U.S. Attorney’s Office has entered into a consent decree with the City of Quincy to resolve violations of the Clean Water Act regarding the City’s stormwater and sanitary sewer systems. Water sampling indicated untreated sanitary sewage discharging from numerous Quincy stormwater outfalls, including outfalls discharging at beach areas.

The settlement requires Quincy to implement extensive remedial measures to minimize the discharge of sewage and other pollutants into Quincy Bay, Dorchester Bay, Neponset River, Hingham Bay, Boston Harbor and other water bodies in and around Quincy. The cost of the remedial measures is expected to be in excess of \$100 million. The City will also pay a civil penalty of \$115,000.

Under the proposed consent decree, Quincy will implement a comprehensive and integrated program to investigate, repair and rehabilitate its stormwater and sanitary sewer systems. The proposed settlement is also consistent with U.S. Environmental Protection Agency (EPA) directives to strengthen enforcement of violations of cornerstone environmental statutes in communities disproportionately impacted by pollution, with special focus on achieving remedies with tangible benefits for the community.

This settlement is a reminder that municipalities must comply with the law and environmental standards to prevent and address pollution caused by defects in their stormwater and sewage systems,” said Acting United States Attorney Nathaniel R. Mendell. “This is a matter of environmental protection and public health.”

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2022 CGP

EPA is seeking public comment on its proposed 2022 Construction General Permit (CGP) for stormwater discharges from construction activity.

Once finalized, this permit will replace the 2017 CGP, which expires on February 16, 2022, and will cover stormwater discharges from construction activities in areas where EPA is the NPDES permitting authority in EPA’s Regions 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10. The public comment period ends July 12, 2021.

Significant changes to the CGP are separated into two categories: clarity and specificity.

Highlighted changes for clarity include:

- New language to state the EPA does not endorse specific stormwater control or stormwater pollution prevention plan (SWPPP) products or vendors.
- Differentiation between routine maintenance and corrective action, which includes defining routine maintenance as repairs to or replacement of stormwater controls that can be completed within 24 hours of first discovering the need for the repairs or replacement. Any repairs or replacements that take longer than 24 hours will be classified as a corrective action.
- Clarification “that 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.” A definition of the term “seasonally dry period” and “includes resources in the form of maps and zip code tables to assist construction operators located in an arid or semi-arid area in determining when they may be operating during a seasonally dry period of the year.”

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- A proposal “to add a numeric inspection threshold for 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.... This change would clarify that where there is a discharge from snowmelt caused by an accumulation of 3.25 inches or greater of snow, an inspection would be required.”
- Clarification that electronic versions of the SWPPP inspection reports and corrective action logs may be used as long as they meet certain minimum requirements.
- Proposed “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.” These changes basically clarify “existing procedures or updates to resources that operators can use to determine whether species are located in the ‘action area’ of the construction site.”

Highlighted changes for specificity include:

- Perimeter control installation and maintenance requirements. “... [I]f there is evidence of stormwater circumventing or undercutting the perimeter control after a storm event, the operator would be required to extend the length of the perimeter control or repair any undercut areas, whichever applies.”
- Pollution prevention requirements for chemicals used and stored on-site. Control requirements are established “for smaller-sized containers by requiring that the operator use water-tight containers, place them on a spill containment pallet (or similar device) if kept outside, and have a spill kit available at all times and in good working condition, and personnel available to respond quickly to a spill or leak,” according to the EPA. “The proposed permit also includes controls that are more suitable to larger volumes of chemicals on site, such as requiring a temporary roof or secondary containment to prevent a discharge from a leak or spill.”
- Dewatering discharge requirements. “The proposed revisions to the permit add clarity to the existing pollutant control provisions, increase the number of inspections required while the dewatering discharge is occurring, establish a tailored checklist of problems to review during the inspection, and identify specific triggers for when corrective action is required.... During an inspection of the dewatering operation, the operator would also be required to take photographs of (1) the dewatering water prior to treatment by a stormwater control(s) and the final discharge after treatment; (2) the stormwater control; and (3) the point of discharge to any waters of the U.S. flowing through or immediately adjacent to the site.”
- Signs of sedimentation attributable to construction site discharges. Changes are proposed to document signs of sedimentation attributable to construction site discharges, such as requiring operators to account for the amount of sediment leaving the site.
- Training requirements. Modifications are proposed to strengthen the training requirements for site inspectors to specify “that anyone carrying out inspections must either (1) have completed the new EPA construction inspection course developed for this permit and passed the exam, or (2) hold a current valid certification or license from a program that covers essentially the same principles as EPA’s inspection course.” The Agency is seeking comments on the specifics of how to design this training program and the “criteria used to describe the minimum requirements for third-party training programs.”
- Site stabilization. The proposed changes include the requirement that operators “take and submit photographs showing the stabilized areas of the site following completion of construction.”
- Notice of Intent (NOI). According to the international law firm Beveridge & Diamond PC, “The NOI form, which operators must submit when seeking coverage under the CGP, would include new questions aimed at addressing whether: (1) dewatering water will be discharged at the site; (2) there are other operators covered by the CGP at the same site; and (3) personnel conducting site inspections will meet the proposed updated training requirements.”

EPA Announces \$67 Million Grant Program to Help Communities Manage Stormwater

On April 1, 2021 U.S. Environmental Protection Agency (EPA) announced the availability of \$67 million in grant funding through the new Sewer Overflow and Stormwater Reuse Municipal Grant program.

This funding will support public health and environmental protections by helping states and cities improve stormwater management to address sewer overflows and reduce pollution that can flow into local waterways.

“While utilities do an incredible job of managing wastewater and safely returning it to the environment, increased water from heavy rains and storms can challenge and even circumvent this great work,” said EPA Acting Assistant Administrator for Water Radhika Fox. “Under America’s Water Infrastructure Act of 2018, this new grant program empowers EPA’s state, local, and utility partners to improve stormwater management and benefit communities.”

This grant program will provide funding for critical overflow and stormwater infrastructure projects in communities. Stormwater can be a significant source of water pollution and a public health concern. Stormwater can collect pollutants—including trash, chemicals, oils, and dirt/sediment—and convey them to nearby waterways.

When mixed with domestic and industrial wastewater in combined sewers, stormwater can also contribute to combined sewer overflows (CSO) during heavy rainstorms.

Managing stormwater is a complex environmental challenge and EPA is working with its partners to meet the needs of communities.

States, U.S. territories, and the District of Columbia can apply for funding. Once awarded, these funds will be provided as sub-awards to municipal entities for projects that address infrastructure needs for CSOs, sanitary sewer overflows (SSO), and stormwater management.

Through this \$67 million investment in water infrastructure, EPA estimates that over a thousand direct and indirect jobs will be created.

For more information about the program, visit: <https://www.epa.gov/cwsrf/sewer-overflow-and-stormwater-reuse-municipal-grants-program>.

Stormwater Permit News

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“This settlement builds on work done over the past three decades to address pollution in Boston Harbor,” said EPA New England Acting Regional Administrator Deborah Szaro. “The work required under the proposed settlement will achieve cleaner and healthier water in Quincy and nearby areas. This will protect people’s health, making it safer to enjoy beaches or other recreation in or on the bays and rivers in the area.”

In March 2019, the U.S. Attorney’s Office filed a civil complaint alleging that the City of Quincy inadequately controlled sewage leaking from its sanitary sewer system, allowing sewage to mix with stormwater and be discharged from the municipal storm sewer system into nearby waterbodies, including at beach locations. The complaint also alleged that Quincy’s sanitary sewer system has overflowed on numerous occasions, resulting in discharges of sewage.

Raw sewage overflows from sanitary sewers and discharges of stormwater mixed with sewage from municipal storm sewer systems introduce a variety of harmful pollutants, including disease causing organisms, and can contribute to illnesses and beach and shellfish bed closings.

The proposed consent decree establishes a schedule for Quincy to investigate the sources of sewage being discharged from its storm drains. Quincy will first complete its investigations of drainage areas discharging to beach areas, including Wollaston Beach and the Adams Shore area.

Quincy will prioritize the rest of the investigations according to the sensitivity of receiving waters and evidence of sewage.

The proposed consent decree also requires Quincy to remove all identified sources of sewage as expeditiously as possible.

In addition, Quincy is required to conduct frequent and enhanced monitoring (in both dry and wet weather) of its stormwater outfalls. Until pollutants are removed from its storm drain discharges, Quincy will be required to post notices to warn beachgoers of contaminated stormwater at such storm drain outfalls.

The remedies under the proposed consent decree also include the investigation and repair of Quincy’s sanitary sewer infrastructure, and the integration of that work with its stormwater investigations.

Some portions of Quincy’s sanitary sewer system are over 100 years old. Numerous studies conducted by Quincy have identified significant and widespread defects in the sanitary sewer system, including cracks that allowed sewage to leak.

While Quincy has made some repairs to the sanitary sewer system, the proposed consent decree will require future work to be conducted on a fixed schedule and coordinated with its stormwater investigations.

The proposed consent decree requires the City to conduct all investigations and complete remedial work by December 2034.

Environmental Justice

In an April 7, 2021 message to EPA employees, Administrator Michael Regan provided direction to all EPA offices:

“EPA’s longstanding mission is to protect human health and the environment. As your new Administrator, I believe we must be explicit about the full meaning of this important mission, recognizing that our responsibilities are to protect the health and environment of all Americans, including those historically marginalized, overburdened, underserved, and living with the legacy of structural racism.

EPA has defined environmental justice as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation and enforcement of environmental laws, regulations and policies.”

While EPA has advanced environmental justice initiatives in the past, we have much more work to do. Too many communities whose residents are predominantly of color, Indigenous, or low-income continue to suffer from disproportionately high pollution levels and the resulting adverse health and environmental impacts.

When it comes to advancing EPA’s mission, we must consciously and affirmatively pursue justice as we jointly confront environmental and climate challenges with our federal, state, Tribal, and local partners. This is our collective task and every office, and every EPA region, shares this responsibility. We must examine, and appropriately use, the full array of policy and legal tools at our disposal to incorporate environmental and climate justice considerations in our analysis, rulemaking, permitting, enforcement, grantmaking, operations, disaster response and recovery, and other activities. “

Acting Assistant Administrator, Lawrence Starfield, issued a memo to EPA’s Office of Enforcement and Compliance Assurance Office Directors and Deputies, Enforcement and Compliance Assurance Directors, and Deputies Regional Counsels and Deputies on April 30, 2021 wherein he laid out “Enforcement Program Goals to Advance Environmental Justice.” He states in that memo:

- Increase the number of facility inspections in overburdened communities. To effectuate this goal, we first plan to evaluate what types of programmatic inspections address the most serious

threats to overburdened communities. We have begun to examine that issue with regard to national initiatives, and Regional input will be critical to this evaluation. , we can set new inspection goals.

- Strengthen enforcement in overburdened communities by resolving environmental noncompliance through remedies with tangible benefits for the community.
 - o Prevent further pollution due to noncompliance, mitigate past impacts from pollution, and seek penalties for violations that impact overburdened communities.
 - o Seek early and innovative relief, e.g., fence-line monitoring and transparency tools.
 - o Incorporate Supplement Environmental Projects (SEPs) in settlements, where appropriate.
 - o Assist and seek to obtain restitution for victims of environmental crimes.
- Increase engagement with communities about enforcement cases that most directly impact them.
 - o Provide more information to communities about facilities, pollution, and enforcement activities, through appropriate and available means such as press releases and public meetings. Empower communities by increasing awareness of enforcement program resources and make it easier for the public to search for EJSCREEN information and Enforcement and Compliance History Online (ECHO) compliance history data.
 - o Increase opportunities for community engagement in the development of cleanup and reuse agreements to ensure community concerns are addressed in a meaningful manner.

Mr. Starfield has established an enforcement steering committee comprised of 6 senior managers from OECA Headquarters and Regions to provide oversight. Additionally, this small team will coordinate with the Office of Environmental Justice and other entities across the Agency as appropriate.



Clean Water Act Enforcement Activity

EPA Fines Swain Construction Inc. in Omaha 150K for Alleged Clean Water Act Violations

(Lenexa, Kan., March 18, 2021) - The U.S. Environmental Protection Agency (EPA) has reached a settlement with Swain Construction Inc. in Omaha, Nebraska, for alleged violations of the federal Clean Water Act.

According to EPA, the concrete recycling and sales company discharged pollutants into protected waters adjacent to its facility without obtaining required permits. As part of the settlement, the company will restore the damaged streams and pay a \$150,000 civil penalty.

“Enforcing environmental regulations protects the environment and ensures that companies following the rules aren’t at a disadvantage to those who violate the law,” said David Cozad, director of EPA Region 7’s Enforcement and Compliance Assurance Division.

“The Agency is committed to keeping pollutants out of America’s waters and holding polluters responsible.”

In the settlement documents, EPA alleges that Swain Construction used mechanized equipment to move concrete rubble, construction debris, and other pollutants into Thomas Creek and Little Papillon Creek, impacting approximately 1,300 feet of stream channel. Two EPA inspections at the company’s facility in 2019 confirmed these unauthorized activities, as well as a lack of pollution controls that resulted in unauthorized stormwater discharges and wastewater runoff into Thomas Creek from the company’s dust-suppression efforts. Both streams are designated as “impaired” by the state of Nebraska. Waters are assessed as impaired when an applicable water quality standard is not being attained.

In addition to paying the penalty, the company also agreed to restore the impacted stream stretches and install facility controls to minimize or eliminate further discharges.

EPA proposes settlement with BNSF to resolve North Platte River oil spill in Wyoming

DENVER (March 5, 2021) – U.S. Environmental Protection Agency (EPA) announced a Clean Water Act (CWA) settlement with Burlington Northern Santa Fe Railway Company (BNSF) in which the company has agreed to pay \$140,000 for alleged Clean Water Act violations associated with a discharge of oil into

the North Platte River near Guernsey, Wyoming.

EPA alleges that BNSF violated Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3) with discharges of 5900 gallons of diesel fuel and 800 gallons of lubricating oil into the North Platte River. The discharges occurred on February 4, 2019, in Wendover Canyon, northwest of Guernsey; due to a derailment of three locomotives and five rail cars owned by BNSF. The sources of the diesel and oil were two of the derailed locomotives.

BNSF reported the spill to the National Response Center (NRC) and an EPA On-scene Coordinator was dispatched to the spill site. BNSF worked with the State of Wyoming and EPA to clean up the spill. The Clean Water Act prohibits the discharge of oil or hazardous substances to waters of the US or their adjoining shorelines in quantities that may be harmful to public health or the environment and is administered by EPA and the Coast Guard. For more on the Clean Water Act’s prohibition against discharges of oil into waters of the U.S. and SPCC regulations, visit: <https://www.epa.gov/compliance/clean-water-act-cwa-compliance-monitoring#oil>.

EPA cites Alliant Techsystems Operations at Navy facility in Keyser, West Virginia

PHILADELPHIA (June 2, 2021) – Alliant Techsystems Operations LLC will pay a \$350,000 penalty to settle several alleged environmental violations at the U.S. Navy-owned Allegany Ballistics Laboratory in Keyser, West Virginia.

Alliant Techsystems, a subsidiary of the Northrup Grumman Corporation, operates the laboratory under a lease with the Navy. There, Alliant Techsystems manufactures military products that include solid fuel rocket motors, explosive warheads, solid fuels and propellants.

The cited violations were related to hazardous waste storage and treatment operations, the facility’s Clean Air Act permit, water discharge requirements under the facility’s National Pollution Discharge Elimination System (NPDES) permit, and the facility’s Spill Prevention Control and Countermeasures Plan.

The company also allegedly violated the Resource Conservation and Recovery Act (RCRA), the federal law governing the treatment, storage, and disposal of hazardous waste.

A New WOTUS Definition (again)

WASHINGTON – U.S. Environmental Protection Agency (EPA) and Department of the Army (the agencies) are announcing their intent to revise the definition of “waters of the United States” (WOTUS) to better protect our nation’s vital water resources that support public health, environmental protection, agricultural activity, and economic growth. As described in an EPA declaration requesting remand of the 2020 Navigable Waters Protection Rule, a broad array of stakeholders—including states, Tribes, local governments, scientists, and non-governmental organizations—are seeing destructive impacts to critical water bodies under the 2020 rule.

“After reviewing the Navigable Waters Protection Rule as directed by President Biden, the EPA and Department of the Army have determined that this rule is leading to significant environmental degradation,” said EPA Administrator Michael S. Regan. “We are committed to establishing a durable definition of ‘waters of the United States’ based on Supreme Court precedent and drawing from the lessons learned from the current and previous regulations, as well as input from a wide array of stakeholders, so we can better protect our nation’s waters, foster economic growth, and support thriving communities.”

“Communities deserve to have our nation’s waters protected. However, the Navigable Waters Protection Rule has resulted in a 25 percentage point reduction in determinations of waters that would otherwise be afforded protection,” said Acting Assistant Secretary of the Army for Civil Works Jaime A. Pinkham. “Together, the Department of the Army and EPA will develop a rule that is informed by our technical expertise, is straightforward to implement by our agencies and our state and Tribal co-regulators, and is shaped by the lived experience of local communities.”

Upon review of the Navigable Waters Protection Rule, the agencies have determined that the rule is significantly reducing clean water protections. The lack of protections is particularly significant in arid states, like New Mexico and Arizona, where nearly every one of over 1,500 streams assessed has been found to be non-jurisdictional. The agencies are also aware of 333 projects that would have required Section 404 permitting prior to the Navigable Waters Protection Rule, but no longer do.

As a result of these findings, today, the Department of Justice is filing a motion requesting remand of the rule. Today’s action reflects the agencies’ intent to initiate a new rulemaking process that restores the protections in

place prior to the 2015 WOTUS implementation, and anticipates developing a new rule that defines WOTUS and is informed by a robust engagement process as well as the experience of implementing the pre-2015 rule, the Obama-era Clean Water Rule, and the Trump-era Navigable Waters Protection Rule.

The agencies’ new regulatory effort will be guided by the following considerations:

- Protecting water resources and our communities consistent with the Clean Water Act.
- The latest science and the effects of climate change on our waters.
- Emphasizing a rule with a practical implementation approach for state and Tribal partners.

Reflecting the experience of and input received from landowners, the agricultural community that fuels and feeds the world, states, Tribes, local governments, community organizations, environmental groups, and disadvantaged communities with environmental justice concerns.

Further details of the agencies’ plans, including opportunity for public participation, will be conveyed in a forthcoming action. To learn more about the definition of waters of the United States, visit:

<https://www.epa.gov/wotus>

Background

The Clean Water Act prohibits the discharge of pollutants from a point source to navigable waters unless otherwise authorized under the Act. Navigable waters are defined in the Act as “the waters of the United States, including the territorial seas.” Thus, “waters of the United States” (WOTUS) is a threshold term establishing the geographic scope of federal jurisdiction under the Clean Water Act. The term “waters of the United States” is not defined by the Act but has been defined by EPA and the Army in regulations since the 1970s and jointly implemented in the agencies’ respective programmatic activities.

Editorial Comment: The initiative to re-define WOTUS should come as no surprise. New administrations either broaden the definition of navigable waters or they narrow it. Then the new definition is litigated until another administration is elected.



Effluent Guidelines and PFAS

The Association of Clean Water Administrators, the Association of State Drinking Water Administrators, the Association of State and Territorial Solid Waste Management Officials, and the Environmental Council of the States (collectively “Associations”) submitted comments to the United States Environmental Protection Agency (“EPA”) addressing the proposed *Clean Water Act Effluent Limitations Guidelines and Standards: Organic Chemicals, Plastics and Synthetic Fibers Point Source Category*, Docket #EPA-HQ-OW-2020-0582

A focus of the Associations’ comments are per- and polyfluoroalkyl substances (“PFAS”).

The *Proposal* addresses discharges from manufacturers of PFAS. PFAS consists of a large group of man-made chemicals. Their properties include resistance to heat, water, and oil. They have been described as persistent in the environment and resist degradation. Potential exposure to PFAS include pathways through drinking water, air or food.

Several states are addressing PFAS in their Clean Water Act National Pollution Discharge Elimination System (“NPDES”) permitting or related activities. Examples include:

- Industrial discharges
- Public owned treatment works permits
- Stormwater permits
- Pretreatment

The Associations, in their May 17th comments, note that they will be potentially impacted by the effluent limit guidelines, pretreatment standards, and new source performance standards that EPA eventually promulgates for PFAS.

The *Proposal* is an activity being undertaken by EPA pursuant to Section 301(b) of the Clean Water Act

which authorizes promulgation of national categorical standards or limits to restrict discharges of specific pollutants on an industry-by-industry basis. The effluent limits are derived from research regarding the pollution control technology used in the industry. The analysis will include the degree of reduction of a pollutant that can be achieved through the use of various levels of technology.

EPA’s development of categorical effluent limits is an ongoing process. The federal agency continues to promulgate new or upgraded categorical standards for pollutants or facilities that have not been addressed. As a result, existing categorical standards are also assessed to determine if revisions are warranted.

The Associations’ comments outline seven considerations that they believe should be taken into account in regards to the state environmental programs in relation to a future rule. The seven recommendations include:

1. Collaborate on PFAS Data Collection and Sharing
2. Engage with States on PFAS Generally
3. Integrate Data Collection Opportunities into the Suite of EPA Activities into the Future, with Specific Focus on Discharge Data and Treatment Options
4. Develop PFAS Discharge Prioritization Guidance for States
5. Evaluate Other ELG Categories that May Apply to Industries in which PFAS Discharges Have Been Quantified or May Exist
6. Consider Developing PFAS Standard(s) for Facilities Using PFAS in Products or Processes, Potentially Beyond the Scope Identified in this Future Rule
7. Use Existing Data in Addition to Generating New PFAS Data

A copy of the Associations comments can be found here: https://www.asdwa.org/wp-content/uploads/2021/05/ACWA-ASDWA-ASTSWMO-ECOS-Comment_PFAS-ELG-ANPRM_5.17.2021.pdf

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