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May 26, 2016

Mr. Joel Beauvais
Deputy Assistant Administrator, Office of Water
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Re: EPA's Draft National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharges from Construction Activities; Docket ID No. EPA-HQ-OW-2015-0828

Dear Mr. Beauvais:

On April 11, 2016, the U.S. Environmental Protection Agency (EPA) published a draft National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharges from Construction Activities (hereinafter "Draft CGP").¹ The National Association of Home Builders (NAHB) appreciates the opportunity to provide the attached comments on this proposed permit.

NAHB is a federation representing more than 800 state and local homebuilder associations. The organization's membership includes over 140,000 firms engaged in land development, single and multifamily residential construction, remodeling, building material trades, building products manufacturing, and commercial and light industrial construction. Over 80 percent of NAHB's members are classified as "small businesses," as defined by the U.S. Small Business Administration, and NAHB members collectively employ over 3.4 million people nationwide. Our builder members will construct four out of five new homes in the U.S. this year.

Because the nature of construction involves earth-moving activities, NAHB members must comply with federal, state and local active stormwater regulations. Operators must seek coverage for any land disturbing activity over one acre, or under one acre if the parcel is located within a larger common plan of development or sale. Although EPA's CGP directly applies in only a handful of states and territories,² it serves as a national model for state-issued CGPs. As such,

¹ 81 Fed. Reg. 21,328. April 11th, 2016.

² EPA 2012 CGP coverage is available for operators of eligible construction activities in Idaho, Massachusetts, New Hampshire, New Mexico, and the District of Columbia, as well as several other territories and Indian Country Lands, listed here: <https://www.epa.gov/npdes/stormwater-discharges-construction-activities#cgp>.

any change to permit terms is of national interest. EPA's current CGP became effective on February 16, 2012, and will expire on February 16, 2017. Through today's proposal, EPA requests input on new CGP requirements, procedural terms/conditions, deadline changes, and reporting obligations that will directly and significantly impact our members' construction operations on sites seeking coverage under EPA's 2017 GCP.

NAHB continues to support the Agency's commitment to a non-numeric, Best Management Practice (BMP) based approach to compliance under this general permit. This approach has proven to be an efficient, economical and effective way to reduce the discharge of pollutants in stormwater from construction activities. Unfortunately, several new provisions and proposals threaten to hinder the implementation of this approach by inappropriately altering the iterative nature in which BMPs are installed and recorded throughout the development process. These changes seek to make the GCP function more like an individual permit. Such an outcome is unacceptable.

NAHB is particularly concerned that EPA's proposed CGP;

- **Considers mandating complicated and problematic compliance arrangements for sites with multiple operators.** While a small number of larger developers may wish to orchestrate a joint Stormwater Pollution Prevention Plan (SWPPP), developers and smaller builders are often not present on site during the same time period. We support EPA allowing alternative SWPPP arrangements for operators who may choose to opt-in to dividing permit responsibilities for an entire site. Mandating joint SWPPPs would be infeasible for the majority of developers and builders.
- **Improperly holds permittees responsible for BMPs over which they have no control.** By changing language in Part 1.1.1 to suggest that every operator on a shared site is jointly liable for flows leaving their property and entering others' property, EPA is illegally and wrongly placing responsibility on actors beyond the point of discharge. NAHB asks EPA to provide a definition for "shared controls" term in Part 1.1.1 to specify that "shared controls" include only those controls operators have legal right to both a) access and b) modify, through either ownership or a signed access agreement.
- **Creates numerous administrative and data quality problems by requiring public posting of SWPPP data online.** Making outdated SWPPP data publically available online represents an unreasonable, unprecedented paperwork burden that would not pass the "integrity, quality, utility" test outlined in Office of Management and Budget (OMB) guidance. In addition, EPA's [Enforcement and Compliance History Online \(ECHO\)](#) database was never intended to hold SWPPP plans from CGP permittees. A wide range of stakeholders negotiated with EPA to reach consensus on what NPDES data should be shared electronically with EPA under the new [NPDES Electronic Reporting Rule](#) published just months ago. CGP SWPPPs were specifically left out.

- **Fails to recognize that active construction operators are different than industrial or CAFO permittees.** The utility and feasibility of mandating reporting provisions similar to new provisions in EPA’s other NPDES stormwater permits (e.g., the Multi Sector General Permit (MSGP) for industrial operations, or CAFO program for combined animal feeding operations), is not readily transferable to the daily realities of active construction sites. Unlike active construction SWPPPs, most industrial site SWPPPs are modified only a few times a year, if at all. Facilities are permanent; operations are routine and consistent. Active construction sites may update SWPPPs monthly, even weekly, and thus should not be subject to similar reporting requirements.
- **Unlawfully expands the Construction General Permit Notice of Intent (NOI) form.** EPA violated procedural requirements set forth under the Paperwork Reduction Act (PRA) by failing to file an information collection request (ICR) for additional fields related to percent impervious surface and outfall location information in the proposed 2017 NOI form. These changes would increase each applicant’s reporting/paperwork burden well beyond the average 3.7 hours in EPA’s existing ICR approval from OMB “Form Approved OMB No. 2040-0004.” NAHB maintains EPA must submit an individual ICR to the Office of Management and Budget (OMB) to cover any new data collection requests under the 2017 CGP.
- **Did not follow proper administrative procedures.** EPA failed to recognize the draft CGP as a rulemaking and thus failed to fully comply with the Regulatory Flexibility Act (RFA). EPA’s Proposed CGP will have a significant impact on a substantial number of small entities, necessitating appropriate RFA mandates, checks and balances. In addition, EPA should have submitted the permit to OMB for review pursuant to E.O. 12866 due to the significant effect of proposed changes on construction sector, as well as the novel legal and policy issues associated with possible new data collection and public availability requirements. In addition, NAHB is concerned that the current cost analysis for this rule does not adequately reflect all proposed/possible changes.
- **Fails to adequately improve administration of EPA’s CGP across sites with multiple operators.** The fact that many of the proposed provisions for which EPA is soliciting comment are directly related to the question of coverage, responsibility and permitting for multi-operator sites indicates that EPA is aware of the challenges around multiple operators and is and seeking solutions. However, the alternatives EPA has suggested to rectify shared operator liability and combine efforts through shared SWPPPs are moving in the wrong direction. Solutions to fundamental administrative issues in this permit need time and careful consideration from a wide group of stakeholders.

Unfortunately, due to the truncated 45-day comment period NAHB was unable to fully evaluate the implications of all proposed provisions and requests for comment in this permit. However, in addition to fixing the procedural issues raised above, NAHB specifically requests that the Agency not include any mandate in the final permit requiring the posting of “initial” SWPPP plans. We have little confidence that data collected under this model would be either useful or

accurate. We also request that the agency refrain from introducing new SWPPP reporting requirements for the CGP identical to those required of industrial permittees under EPA's Multi Sector General Permit (MSGP). Here too, we are concerned that requiring active construction operators to predict any and all controls employed over the life of a project is impractical.

NAHB remains hopeful that EPA will continue to work with a wide group of stakeholders after the close of the comment period to identify additional options if this requirement is to be considered in the final draft.

If you have any questions, please contact Eva Birk, Environmental Policy Program Manager, at (202) 266-8124.

Sincerely,



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NATIONAL ASSOCIATION OF HOME BUILDERS

Comments on
EPA's Draft National Pollutant Discharge Elimination System (NPDES)
General Permit for Stormwater Discharges from Construction Activities

DOCKET ID NO. EPA-HQ-OW-2015-0828

May 25, 2016

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I. INTRODUCTION

EPA's Draft 2017 Construction General Permit (CGP) ("Draft 2017 CGP") and accompanying 2017 CGP Proposed Fact Sheet ("Draft Fact Sheet") detail EPA's proposed changes to the 2012 CGP. In addition to requesting comments on its proposed changes, EPA specifically requests comment on several potential permit modifications. The National Association of Home Builders (NAHB) presents feedback within this document in four sections:

- Comments on Draft 2017 CGP provisions
- Response to Agency requests for comment
- State specific issues
- Additional NAHB comments

*Note: Although EPA identified only seven proposed changes in the Draft Fact Sheet,¹ NAHB noted numerous additional changes in the permit text. Section II of this document incorporates NAHB comment on these additional issues.

¹ The 2017 Draft Fact Sheet identified 7 proposed changes including Streamlining of Proposed Permit, Changes in Types of Discharges Authorized, incorporation of Effluent Limitations from the revised C&D rule; changes to Public Notice of Permit Coverage, changes in Stockpiles and Land Clearing Debris Piles, additional requirements for Construction and Domestic Waste, and a requirement to implement controls to minimize the exposure of polychlorinated biphenyl- (PCB) containing building materials to precipitation and stormwater. (2017 CGP Draft Fact Sheet, Page 11).

II. COMMENTS ON DRAFT 2017 CGP PROVISIONS

A. Part 1.1.1 - Liability for sites with multiple operators (Footnote #1)

Modifications to language in *Part 1.1.1* propose to make multiple operators jointly liable for flows that leave their property and enter “shared controls” on neighboring sites, regardless of whether those individual operators have legal access to inspect or modify shared controls. Table 1, below describes how multiple operator liability language has evolved over the past three permit terms.

Table 1: Multiple Operator Liability: Comparison Between the 2008, 2012, and Proposed 2017 CGP

(2008) CGP	(2012) CGP	Proposed (2017) CGP Changes
<p>If you have operational control over only a portion of a larger project (e.g., one of four homebuilders in a subdivision), you are responsible for compliance with all applicable effluent limits, terms, and conditions of this permit as it relates to your activities on your portion of the construction site, including protection of endangered species, critical habitat, and historic properties, and implementation of control measures described in the SWPPP. You must ensure either directly or through coordination with other permittees, that your activities do not render another party’s pollutant discharge controls ineffective. (Pg.1)</p>	<p>1. If one operator has control over plans and specifications and a different operator has control over activities at the project site, they may divide responsibility for compliance with the terms of this permit as long as they develop a group SWPPP (see Part 7.1.1), which documents which operator has responsibility for each requirement of the permit.</p> <p>2. If an operator only has operational control over a portion of a larger project (e.g., one of four homebuilders in a subdivision), the operator is responsible for compliance with all applicable effluent limits, terms, and conditions of this permit as it relates to the activities on their portion of the construction site... You must ensure either directly or through coordination with other permittees, that your activities do not render another party’s pollutant discharge controls ineffective. (Pg.1)</p>	<p>1. Operators may divide responsibility for compliance with the terms of this permit provided that each Stormwater Pollution Prevention Plan (SWPPP)The sharing of responsibilities for complying with the terms of the permit does not waive an individual operator’s liability should another operator fail to implement any measures that are necessary for that individual operator to comply with the permit.</p> <p>2. If any individual operator develops a separate SWPPP, that operator remains responsible for compliance with all effluent limits, terms, and conditions of this permit that apply to discharges of stormwater from the operator’s site, including requirements that apply to any shared controls relied upon by the operator. (Pg.1, Footnote 1)</p>

Whereas language in EPA’s 2008 and 2012 CGP states that operators may only be held responsible for permit terms, “as it relates to your activities on your portion of a construction site”², the proposed 2017 language states that “...The sharing of responsibilities for complying with the terms of the permit does not waive an individual operator’s liability should another

² 2012 Final CGP, Page 1

operator fail to implement any measures that are necessary for that individual operator to comply with the permit.”³

These changes will illegally place liability on operators “in good standing” with existing permit requirements on their own sites by effectively making them responsible for impacts beyond the point of discharge from their permitted site. While the issue of identifying liability for combined or “shared” controls may be perceived as a barrier to efficient enforcement of the CGP, NAHB disagrees that creating new operator liabilities is a viable solution.

NAHB urges EPA to retain the existing language of the 2012 permit regarding individual operator compliance (i.e., when that operator has operational control over only a portion of a larger project).

If an operator only has operational control over a portion of a larger project (e.g., one of four homebuilders in a subdivision), the operator is responsible for compliance with all applicable effluent limits, terms, and conditions of this permit as it relates to the activities on their portion of the construction site... You must ensure either directly or through coordination with other permittees, that your activities do not render another party’s pollutant discharge controls ineffective. (2012 CGP, Pg.1)

NAHB feels this language adequately protects individual builders constructing projects within larger subdivisions from being held responsible for flows beyond their individual property’s discharge point.

In Part 1 of Footnote 1 proposed in the 2017 Draft CGP, NAHB also requests that EPA remove all references to “liability.” Liability, to a lay person, is a term that may signify limited responsibility for a specific harm, such as the repair of a silt fence or one-time corrective maintenance to a damaged BMP. If EPA means to connote liability with “permit responsibility” (and associated civil and legal penalties, including fines of \$37,500 per day), EPA should say so explicitly within this section. In addition, NAHB cautions the Agency to consider that operators submitting shared compliance plans or SWPPPs under the proposed language will view new liability constructions as a *disincentive* to multiple operator cooperation.

If EPA wishes to still include language referring to “shared controls”, NAHB urges EPA to revise Part 1.1.1., Footnote #1 to include the following definition:

“The term “shared controls,” for the purposes of this permit, refers to, any best management practice (BMP) included in an operator’s Stormwater Pollution Prevention Plan (SWPPP) for which multiple operators have legal access to inspect, maintain, and modify. Legal access may be achieved on shared sites via direct ownership, legally binding maintenance agreements, etc.”

³ 2017 Draft CGP, Page 1 Footnote 1.

The Agency should also consider defining the term “rely upon,” or remove this term all together since it hinders, rather than helps clarify an operator’s responsibility. For example, one could argue that only those controls contained in an operator’s SWPPP are controls that he/she “relies upon” to achieve permit compliance. Thus, on sites with shared SWPPPs, shared controls would be detailed on a shared SWPPP.

The changes above will protect smaller operators who are in full compliance with permit conditions on their *own* sites by ensuring they are not held liable for circumstances outside their legal control. In all cases a “shared” control is owned by *some entity*. If no permit violations are found on individual sites, then these smaller operators need to be released from any and all further responsibility. NAHB strongly believes that EPA should focus enforcement and program resources on identifying better ways to *identify and educate* owners of shared controls (whether they be homeowner’s associations (HOAs), water utilities, MS4s, etc.), to ensure they are aware of their responsibilities to maintain “shared” features.

B. Part 1.5 - Public Notice of Permit Coverage

EPA proposes that operators be required to post the following message at their construction sites: “If you observe indicators of stormwater pollutants in the discharge or in the receiving waterbody, contact EPA Regional Office at [include Regional Office reporting information].”⁴ Besides the practical reasons for which NAHB opposes this condition, requiring such a notice may violate an operators’ First Amendment rights.

Practically, by including the above sentence, the entire posting announces that the construction site has a federal permit to discharge pollutants into waters of the United States and if you (the public) see such pollutants, contact EPA. This will provide operational problems for the site owner, and resource issues for the EPA. The Agency may be bombarded with calls concerning unclear water leaving construction sites. The public has no ability to discern a violation of the CGP from complete compliance, and they cannot determine non-compliance by looking at a discharge. In addition, these calls will lead to unnecessary intrusions into the daily operations of construction sites, leading to delays and a waste of both private and Agency resources.

In addition, the Supreme Court has determined that “leading First Amendment precedents have established the principle that freedom of speech prohibits the government from telling people what they must say”⁵, and that “[C]ompelled statements of fact . . ., like compelled statements of opinion, are subject to First Amendment scrutiny.”⁶ The message above arguably forces operators to explain to the public the EPA’s view of the Clean Water Act, and where the public can find information pertaining to the Agency. This is not a message an operator would send absent this requirement. Thus, it is a “content-based regulation of speech.” Furthermore, it is

⁴ Draft 2017 CGP, Page 7

⁵ *Rumsfeld v. Forum for Acad. & Institutional Rights, Inc.*, 547 U.S. 47, 61 (2006).

⁶ *Id.*

not “commercial speech” as the Court has defined that term because it is not an advertisement to a prospective client. As such, the EPA requirement is subject to strict scrutiny. In other words, the condition must be narrowly tailored to satisfy a compelling interest of the government.

While the requirement for clean water is a compelling government interest, this is an overbroad classification of the condition above. The government’s interest in requiring operators to include EPA’s message is to persuade the public to assist the EPA with its duties. NAHB suggests that the EPA can inform the public about Clean Water Act requirements and ask for their assistance in ways other than abridging the First Amendment rights of construction site operators. If EPA wishes to educate the public about local stormwater pollution issues, it can post information on a webpage, or buy advertisements in the local newspaper. This requirement should be removed.

C. Part 2.0 – Technology-based effluent limits

EPA included a number of changes to the technology-based effluent limits section (Part 2.0) in order to bring the permit in line with 2014 amendments to the C&D rule. Comments below address specific changes in this section.

Part 2.1.2: Design and install all stormwater controls in accordance with good engineering practices, including applicable design specifications.

In footnote 11, the Agency suggests that operators must explain why their stormwater design departs from “applicable” erosion and sediment control manuals. The Agency is well aware that most “manuals” are guidance documents and therefore not mandatory. However, as written, if an operator decides not to follow a guidance document and fails to explain why, that operator could be found in violation of the CGP. Thus, the guidance document has a legal effect on the operator, and is therefore a “rule” under the APA.⁷ NAHB does not believe the Agency wishes to make every “applicable” guidance document an APA rule, and suggests that the last sentence of footnote 11 be deleted.

Part 2.2.5 Manage stockpiles or land clearing debris piles composed, in whole or in part, of sediment and/or soil.

EPA proposes to require cover or appropriate temporary stabilization for all inactive piles of sediment or soil that will be unused for 14 or more days, consistent with the temporary stabilization deadlines in Part 2.2.14 of the proposed permit. Proposed provisions read as follows:

2.2.5 Manage stockpiles or land clearing debris piles composed, in whole or in part, of sediment and/or soil:

⁷ 5 U.S.C. § 551(4).

- a. Locate the piles outside of any natural buffers established under Part 2.2.1 and away from any stormwater conveyances, drain inlets, and areas where stormwater flow is concentrated;
 - b. Surround piles with a sediment barrier;
 - c. Provide cover or appropriate temporary stabilization (consistent with the requirements of Part 2.2.14), and contain and securely protect from wind, for piles that will be unused for 14 or more days; and
 - d. You are prohibited from hosing down or sweeping soil or sediment accumulated on pavement or other impervious surfaces into any stormwater conveyance, storm drain inlet, or water of the U.S.
- (2017 Draft CGP, Page 10)

These changes step beyond EPA's Clean Water Act (CWA) authority and should be removed. The Supreme Court has explained that:

[T]he National Pollutant Discharge Elimination System [requires] a permit for the "discharge of any pollutant" into the navigable waters of the United States, 33 U.S.C. § 1342(a). The triggering statutory term here is not the word "discharge" alone, but "discharge of a pollutant," a phrase made narrower by its specific definition requiring an "addition" of a pollutant to the water.⁸

Furthermore, many circuit courts have affirmed that the Agency's authority under the CWA is limited to the discharge of pollutants into navigable waters. The D.C. Circuit put it best more than 25 years ago when it held that the CWA "does not empower the agency to regulate point sources themselves; rather, EPA's jurisdiction under the operative statute is limited to regulating the discharge of pollutants."⁹ The D.C. Circuit furthered this idea in *American Iron & Steel Inst. v. EPA* when it ruled that the Agency may not regulate the pollutant levels in a facilities' internal waste stream.¹⁰ Specifically, the court explained, "by authorizing the EPA to impose effluent limitations only at the point source, the Congress clearly intended to allow the permittee to choose its own control strategy."¹¹ Thus, any requirement that attempts to regulate the facility, as opposed to the discharge of a pollutant, exceeds EPA's authority.

Pursuant to the above rule, NAHB suggests that conditions 2.2.5(b) and (c) exceed EPA CWA authority. Not all stockpiles will lead to the transfer of pollutants into a navigable water (i.e. landscaping stone, bricks, wood piles) and requiring secondary containment around them exceeds EPA's authority as the agency did not tie the requirement to a specific discharge. Similarly, 2.2.5(c) refers to releases due to wind. To the extent that the Agency is regulating internal facility operations that do not lead to point source discharges, it is exceeding its

⁸ *S.D. Warren Co. v. Maine Bd. of Envtl. Protection*, 547 U.S. 370, 380–81, (2006).

⁹ *Natural Resources Defense Council, Inc. v. Environmental Protection Agency*, 859 F.2d 156, 170 (D.C.Cir.1988).

¹⁰ *Am. Iron & Steel Inst. v. EPA*, 115 F.3d 979, 996 (D.C. Cir. 1997).

¹¹ *Id.*

authority. Moreover, it is unclear whether operators must comply with both 2.2.5(b) and (c). For example, if a stockpile is surrounded by a sediment barrier, does the operator also have to cover that pile under 2.2.5(c)?

Finally, in 2.2.5(d) the EPA is prohibiting the sweeping or hosing of impervious surfaces if the runoff may enter a stormwater conveyance. Again, the Agency is trying to control the operation of the facility, in exceedance of its authority over discharges of pollutants. In addition, in certain instances, such cleaning may be necessary to maintain a safe worksite. Therefore, NAHB suggests that the Agency reword 2.2.5(d) to include only discharges into waters of the United States.

Part 2.2.6: Minimize Dust.

The release of dust from a construction site is not a point source discharge into a water of the United States and therefore not under the EPA's authority under the Clean Water Act. This language should be removed.

Part 2.2.11: Minimize Erosion Of Stormwater Conveyance Channels.

In 2.2.11 the condition's purpose is "to minimize erosion." As explained, this is not tied to a discharge and exceeds the Agency's authority. EPA should remove these provisions.

Part 2.2.12 & 2.2.14: Installing Sediment Basins, Stabilizing Exposed Portions of a Site.

Again, to the extent the permit refers to minimizing erosion on site the Agency is attempting to control the internal operations of the facility in exceedance of its authority. EPA should remove these provisions.

Part 2.3.3.e.ii: Construction and Domestic Waste.

EPA proposes requiring waste container lids to be kept closed when not in use. For waste containers that do not have lids and could leak, EPA suggests requiring either: cover (e.g., a tarp, plastic sheeting, temporary roof) to minimize exposure of wastes to precipitation, OR a similarly effective means designed to minimize the discharge of pollutants (e.g., secondary containment).

This provision will be particularly difficult and costly to implement. Waste containers do not often come with lids, meaning this requirement will likely require many operators to invest in tarps or plastic sheeting. Experience has noted that these methods often fail during wind/wet weather events. To minimize minor enforcement violations associated with this requirement, NAHB recommends removing all modifications to this section until more effective means of low-cost waste container coverage are on the market.

If these provisions are retained, NAHB suggests the following modifications:

- EPA should provide specific examples of effective secondary containment methods for dumpsters.
- The term “when not in use” should be replaced by “at the close of the workday” because the term “when not in use” is too vague.
- Reference to dumpsters that “could leak” should be removed. Most dumpsters have weep holes in them to help drain water out during rain or snow.
- An exception should be provided for construction and domestic wastes that are not likely to release pollutants when in contact with stormwater. Many construction “wastes”, (opposed to active materials), such as lumber and recyclable plastics are designed to come in contact with precipitation, so there is little benefit to covering them.
- An exception in Part 2.3.3.e.ii for pick-up and drop-off/delivery piles. There are concerns with how “pick-up” and “drop-off” piles containing construction and domestic waste will be treated under this new provision. It’s highly likely, for example, that there will be piles of waste on a site for a short time outside of dumpsters for the purposes of pick-up by recycling operators, resulting in potential violations.

Part 2.3.3.f - Pollution Prevention Requirements for Demolition Activities.

For structures with at least 10,000 square feet of floor space built or renovated before January 1, 1980, EPA proposes that operators must, “implement controls to minimize the exposure of polychlorinated biphenyl- (PCB) containing building materials, including paint, caulk, and pre-1980 fluorescent lighting fixtures to precipitation and to stormwater.” EPA also proposes to require “information about the demolition location and associated pollutants to be documented in the SWPPP.”¹²

NAHB understands EPA’s obligation to address emerging stormwater pollutants. However, the Agency must assure the effectiveness of given controls before mandating their use across a wide community of operators. NAHB requests that EPA remove the requirement in Part 2.3.3.f. pertaining to PCBs until further study has been done to identify controls appropriate for PCBs released during demolition. NAHB also requests that EPA not consider additional control for washwater containing PCBs. Currently, dust reduction and general erosion and sediment control of discharges leaving a site are the most commonly recommended practices to reducing mobilization of PCBs during demolition.¹³ Operators will *already* be conducting these practices on site if dust is present (See Part 2.2, Part 2.2.6).¹⁴ NAHB cautions the Agency against including any further PCB specific requirements until firm evidence of the existence of viable, cost effective additional controls exists.

¹² Draft 2017 CGP, Page 16

¹³ Geosyntec Consultants. *Integrated Monitoring Report Part B: PCB and Mercury Loads Avoided and Reduced via Stormwater Control Measures*. Prepared for Bay Area Stormwater Management Agencies Association. January 23, 2014.

Information on the *amount* of PCBs released during demolition is also not well known. One study from the San Francisco Bay area conducting a literature review on the subject noted that, “Data on the amount of PCBs from caulk that might be mobilized during demolition/renovation and available for further mobilization by rainfall and runoff is very limited.”¹⁵

Jurisdictions with basin-wide TMDLs for PCBs have experimented with various implementation efforts to limit their discharge of this pollutant into local water bodies, based on estimated source load ratios. In these cases too, attention to the application of controls specifically tailored to demolition remains limited. Where these communities have conducted extensive studies on the loads of PCBs derived from demolition activities, the total loads are quite small (8% of total PCB load), compared to sediment erosion from the entire watershed surface (58% of total PCB load), or more easily targeted point sources such as PCBs currently in use (8% of total PCB load), and transformers and large capacitors (5% of total PCB load).¹⁶ In turn, communities have focused their TMDL cleanup efforts on a combination of point source “hot spot” reduction on abandoned industrial sites, and general erosion and sediment controls.¹⁷ These experiences prove that traditional sediment-based controls for construction are still a viable, cost effective solution until more data is gathered on demolition-specific releases.

D. Appendix J – Proposed changes to NOI

EPA’s Draft 2017 CGP Notice of Intent for Coverage (NOI) form contains unnecessary additions that are in violation of the Paperwork Reduction Act (PRA).¹⁸ EPA must remove all new fields until proper permission is granted to collect and share this information. New additions to the NOI form include:

- Estimated percent impervious area that will remain on the site at the completion of construction.
- Type of construction.
- Information regarding demolition activities.
- Identification and latitude and longitude of all stormwater outfalls.

¹⁵ See. Klosterhaus, S., Yee D., Kass, J., Wong, A., McKee L. 2011. Polychlorinated Biphenyls in Sealants in San Francisco Bay Area Buildings: Estimated Stock in Currently Standing Buildings and Releases to Stormwater during Renovation and Demolition. Based on their analysis of the data, Kosterhaus et al. estimated a medium value of 0.0043% of the original PCBs mass contained in building sealants entered the surface water runoff system. (Page 214)

¹⁶ Geosyntec Consultants. *Integrated Monitoring Report Part B: PCB and Mercury Loads Avoided and Reduced via Stormwater Control Measures*. Prepared for Bay Area Stormwater Management Agencies Association. January 23, 2014.

¹⁷ See, U.S. EPA Region III. *Decision Rationale Total Maximum Daily Loads For Polychlorinated Biphenyls (PCBs) Tidal Potomac & Anacostia River Watershed in the District of Columbia, Maryland and Virginia*. October 31, 2007

¹⁸ 44 U.S.C. § 3501 et seq

Before requiring or requesting information from the public, the Paperwork Reduction Act (PRA) requires Federal agencies to (1) seek public comment on proposed collections and (2) submit proposed collections for review and approval by the Office of Management and Budget (OMB).¹⁹ The Agency did not follow this protocol, thus violating the PRA.

To obtain the public's input on an agency's proposal to collect information, the PRA generally requires the agency to publish a 60-day notice in the *Federal Register* soliciting public comment. The Information Collection Request (ICR) notice must include a specific request that the public evaluate whether:

- the proposed collection of information is necessary;
- the accuracy of the agency's estimate of the burden that the collection would impose on respondents;
- comment on how to enhance the quality, utility, and clarity of the information to be collected; and
- comment on how to minimize the burden of the collection of information.²⁰

After conclusion of the 60-day comment period and the agency's internal consideration of the public's comments, the agency is required to submit the collection to OMB and publishes a second *Federal Register* notice to announce the start of OMB review.²¹

Alternatively, agencies may submit a "generic" clearance to OMB, which relieves the agency of some, but not all, public comment obligations. As OMB explains:

An agency may also request a "generic clearance" in situations in which (a) there is a need for multiple, similar low-burden collections that do not raise substantive or policy issues and (b) the specifics of each collection cannot be determined until shortly before the data are to be collected...

Generic clearances have proved useful for customer satisfaction surveys, focus group testing, and website usability surveys...

To obtain a generic clearance, agencies provide the public with opportunity for comment as required by the PRA and provide all information that would allow for meaningful comment, including a description of the need for the collection, the general nature of the collection, an estimate of the overall burden, and a description of the methodologies that will be used to collect the data. Once approval is granted for the overall collection, individual collections that fall

¹⁹ 44 U.S.C. § 3502(1)

²⁰ 44 U.S.C. § 3506(c)(2)(A)-(B); 5 C.F.R. 1320.11

²¹ 44 U.S.C. § 3507(a)(1)(D)

within the generic clearance are reviewed on an expedited basis and are not generally required to undergo further public comment.²²

Collection of information regarding latitude and longitude of multiple outfalls, as well as information regarding impervious surface does not fit into the “low-burden” category associated with generic clearances. Smaller operators, in particular, may not have the existing technology to produce the required accurate estimates. Additionally, obtaining and assembling the additional information will take time and effort on the part of all operators.

Requiring a more robust and altered dataset within the 2017 CGP above and beyond the final mandates set forth in the NPDES E-Reporting Rule also represents a “substantive policy issue”, which again prevents EPA from filing for a generic ICR clearance. As mentioned above, States and other stakeholders worked with EPA over a two year period to determine what data should be electronically submitted to NPDES permitting authorities within the rule’s 5-year implementation timeline. The final E-Reporting Rule requires electronic collection of multiple outfall and impervious surface data from individual permittees only (e.g., large, complex developments). The final *Appendix A* of the NPDES E-Reporting Rule does not contain provisions mandating reporting of impervious surface or multiple outfalls for general permittees. Thus, the issue is raised here why the Agency would choose to require general permittees to collect this data now.

III. POTENTIAL CHANGES

The following section provides feedback on issues raised for public comment that are not yet part of the Draft 2017 CGP.

A. Joint SWPPP requirement

EPA seeks comment on mandating sites with multiple operators to produce a group SWPPP, which would provide in one place documentation as to how permit responsibilities are divided among permitted parties.²³ NAHB heard loud and clear from operators across the county that a mandatory joint SWPPP requirement would not be feasible. As such, EPA should not make the requirement mandatory.

Many large subdivisions have multiple operators over a period of time that can span several years. Typically, a developer is responsible for laying out streets, individual building lots, utility networks and completes his/her work long before individual home builders begin construction activities on their individual building lots. The administrative burden of keeping documentation in one place, as well as coordination of multiple firms for this length of time is unrealistic. *See*

²² Office of Management and Budget. *MEMORANDUM: Information Collection under the Paperwork Reduction Act*. April 7, 2010. https://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/PRAPrimer_04072010.pdf

²³ Draft 2017 CGP, Page 1

Appendix A for a case study demonstrating a typical timeline for a common plan of sale in New Mexico, which illustrates the difficulty of implementing such a requirement.

In addition, developers and builders have different authorities, NPDES obligations, and opportunities to install BMPs at different phases of a project. Individual builders on a subdivision may not be known at the time of SWPPP development, and thus would be required to “opt-in” to an agreement they had no part in crafting. The same goes for infill/orphan lots for which a group SWPPP was previously developed. Here too, operators would have to opt-in to a set of requirements outside of their control. Coordination issues would be significant, including identifying a party in charge, identifying who makes final decisions, and assigning and enforcing responsibilities, etc. Many BMP management decisions are business-related, and not necessarily project-related, which is not addressed in EPA’s request for comment. It’s unclear, for example, how a builder who wanted to set his/her business apart by incorporating more green features or standards, while others didn’t, would be treated in a joint SWPPP scenario. Another procedural issue is determining what happens when a large percentage of the development is built out and the developer has completed his/her responsibilities and files an NOT. These challenges become greater when considering the current shortage of buildable lots.

Despite these difficulties, some builders/developers on shared sites may still want the option to submit joint SWPPPs or even joint permits. EPA could present alternative ways of sharing responsibility that might save time and money. NAHB is open to non-mandatory alternatives or voluntary approaches for CGP operators that could legally divide or even combine permit responsibilities in alternative ways. However, the option to submit joint SWPPPs must remain just that – an option available to CGP operators, not a mandate from the Agency.

B. Mandating Public Availability of SWPPPs

EPA is considering making initial SWPPPs publicly available by requiring operators to either post them online on a website or submit them to EPA. EPA could require the entire initial SWPPP, or a portion of the initial SWPPP or a URL to be included as part of the NOI form submission. EPA could subsequently make publicly available through the EPA Enforcement and Compliance History Online (ECHO) database.

In addition to arguments raised in a “C&D Coalition Letter”²⁴ on this topic submitted to this docket by NAHB and others, NAHB offers the following feedback on the effect such a provision would have on the residential construction industry. *See Appendix B for a local case study demonstrating the difficulty of implementing such a requirement in New Mexico.*

²⁴ NAHB submitted detailed comments on this proposed requirement via a coalition letter from a wide variety of national construction and development (C&D) groups “C&D Coalition Letter, Dated May 26th, 2016”. This letter details an exhaustive list of legal and practical arguments against the collection and posting of SWPPP information. NAHB incorporates here by reference comments provided in the C&D Coalition Letter entered in the docket for this permit.

Posting of “Small Lot” SWPPPs would be counter-intuitive to the purpose of EPA’s Recently Released Small Lot SWPPP Template.

EPA published the *Small Lot SWPPP Template* in December 2015 to acknowledge that compliance on small lots could be greatly simplified. The streamlined SWPPP template contains a list of less than 20 BMPs to choose from, followed by pages of pre-populated installation and maintenance specifications. Posting such homogenous data (identical specifications, identical BMPs) would not provide great value to either the public or EPA’s enforcement staff, especially considering the burden to small operators to upload or maintain links to electronic documentation. Single-family builders would either have to scan the template and accompanying *hand-drawn* maps and upload them individually, or pay a service to maintain data on the web via a URL link. Several estimates obtained by NAHB members to post and maintain live URL links online for multiple years were cost prohibitive, even for medium sized firms. Although NAHB is firmly opposed to any posting requirements, at minimum, to avoid dis-incentivizing the use of the *Small Lot Template*, EPA should exclude residential sites utilizing the Template from any and all electronic SWPPP reporting requirements.

Experience with the 2016 MSGP proves active construction operators should not be subject to identical reporting requirements.

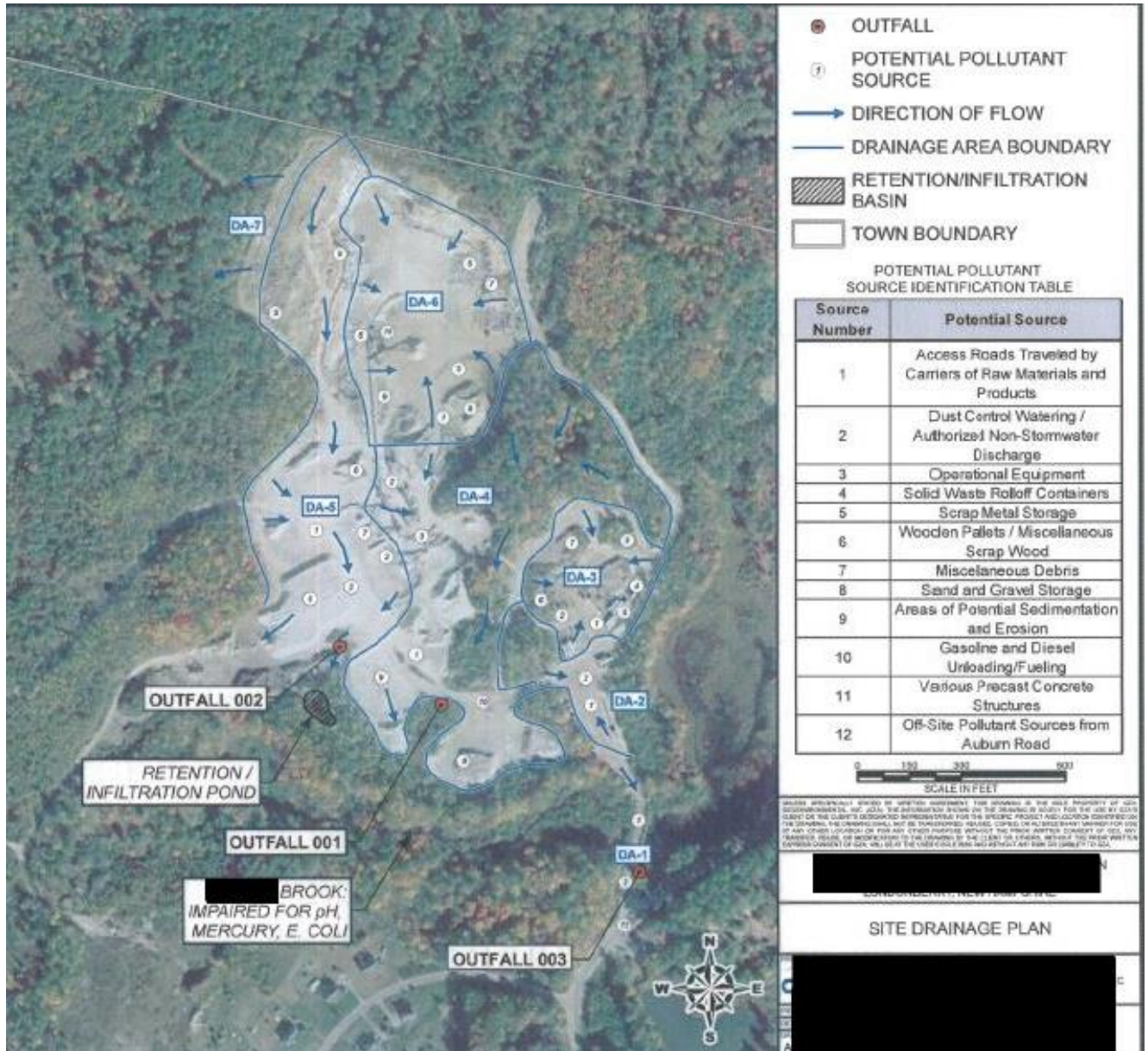
NAHB members complying with both EPA’s MSGP and CGP on separate projects report that new recordkeeping and online reporting mandates for the MSGP are not appropriate for active construction. Operators of the simplest of industrial operations (e.g., sand and gravel mining), report that an “initial” industrial site SWPPP DOES reflect the locations of potential pollution sources and best management practices accurately. This is due to the fact that industrial operations will likely remain static over a number of years. The same cannot be said of active construction, for which potential pollution sources change weekly and monthly with the natural phasing of the development process. During the initial grubbing and grading phase, for example, pollutant sources and associated BMPs can be very different than BMPs used during foundation laying, framing, and finishing. Although an initial SWPPP document is required to predict the “phasing of construction operations over time”,²⁵ this requirement is aimed at encouraging thought on when and where different areas of a site will be disturbed to avoid over-exposure of bare earth. It is highly unlikely that initial phasing plans within a *preliminary SWPPP* will provide an adequate level of detail for interested parties halfway through a project.

Reporting of multiple outfall locations, (again required for MSGP permittees) also proves problematic for active construction. Figure 1, below, represents multiple outfall locations as well as potential pollutant sources on a small industrial gravel operation. Posting this data online may be reasonable, since industrial gravel operations will not likely change over the course of the five year MSGP permit term. For active construction, however, both the outfall and BMP location information can change significantly through the course of a project. Thus a similar map posted

²⁵ 2012 EPA CGP, Part 7.0

online and made accessible to the public in the CGP context could be misleading after a short period of time.

Figure 1: Sample industrial stormwater (MSGP) online compliance document, showing semi-permanent outfalls, potential pollution sources and BMPs. Similar planning documents for *active* construction would not be appropriate for online posting, seeing that they change often.



C. Washdown containing PCBs

See discussion above, (Part II, Section C).

D. Reducing deadlines to complete stabilization

The 2017 Draft CGP requests comment on modifying the deadline to complete stabilization from 14 calendar days to 7 calendar days after stabilization has been initiated (except for sites in arid, semi-arid, and drought-stricken areas and for permittees affected by circumstances beyond their control).

EPA is urged to refrain from tightening stabilization deadlines due to the general infeasibility of the shorter timeframe, and concerns that tighter time restrictions will lead to poor or rushed installation of stabilization controls. Furthermore, if stabilization for sites that discharge to impaired waters is also set at 7 days, then the water quality based limit is no different than the technology based limit.

When asked to provide feedback on this provision, many NAHB members reported that a potential 7 day limit would be particularly infeasible due to the fact that in reality, 7 calendar days equals 5 *active work days*, since the majority of construction projects do not operate on weekends. Almost all members surveyed indicated requiring stabilization within 5 work days would not work on the majority of sites due to availability of in-house staff time, availability of sub-contractors to complete work and/or revise work plans, and the sporadic availability of erosion and sediment control materials in many parts of the country.

Members in states/counties that already have tighter stabilization deadlines also noted that shortening timeframes caused operators to choose quicker, less environmentally friendly methods. These methods are often more likely to fail earlier than more robust methods requiring more man hours to install. EPA is urged to retain the 14 day stabilization timeframe.

E. Increasing inspection frequency

EPA solicits comment on modifying the minimum site inspection frequency to once every 7 calendar days and within 24 hours of the occurrence of a storm event of 0.25 inches or greater. EPA also requests comment on requiring the inspection frequency to be once every 7 days (without the option of inspection once every 14 calendar days and within 24 hours of a storm event).

NAHB members again voiced concern that a new 7 day limit will result in a 5 day compliance timeline, since the majority of construction projects do not operate on weekends. In addition, members indicated that doubling the inspection frequency will effectively double the cost of conducting inspections. It could also delay project completion, as staff time spent on doing inspections means that same staff is not conducting other activities. NAHB is particularly concerned that these factors have not been addressed in the cost analysis for this permit.

The [2014 Survey of Construction](#) (SOC) from the Census Bureau shows that the average completion time of a single-family house is around 7 months, which usually includes around 25 days from authorization to start and another 6 months to finish the construction.²⁶ Assuming a total of 210 days, that construction project would undergo a minimum of 15 inspections under the current CGP, but that number would jump to 30 or more if the inspection frequency were changed to every 7 days. Although the cost and time to perform an inspection varies widely based on many factors, doubling a very low estimate of \$200 per inspection changes that overall cost from \$3000 to \$6000 per house. NAHB submits that this is overly excessive, particularly considering the minimal risk posed by small projects.

One alternative could be to measure time in “work days” rather than calendar days. NAHB also recommends changing minimum rainfall from .25 inches to .5 inches for all discharges to waters that are not impaired waters. Anecdotal testimony from operators indicated that most BMP failures occur above a .25 inch intensity. Other options include tying the inspection frequency trigger to whether or not the operator has physically modified or added new BMP controls, or to the size of the active portion(s) of the project.

F. Introducing inspection frequency for snowmelt runoff

EPA requests comment on the frequency of inspections that should be required for snowmelt runoff. It is unclear how EPA proposes operators to determine when a “snowmelt event” has occurred. Snowmelt can accelerate differently based on different surface conditions (frozen soil horizon vs. concrete or asphalt). Operators estimated it would be quite difficult to determine a standardized way to fairly estimate the effect snowmelt has on site controls. NAHB recommends not adopting any additional inspection frequencies for snowmelt runoff.

IV. STATE SPECIFIC COMMENTS

A. Part 9.4.1.1 - New Mexico – Inspection Certification

NAHB requests that language be added to Part 9.4.1.1. to allow qualifying NM builders to bypass a state-specific requirement requiring inspector certification so that they may use EPA’s new Small Lot SWPPP Template. (See reference in Part 9.4.1.1 referring to New Mexico specific requirements).

B. Part 9.1.2 - New Hampshire – Availability of tiered stream data

NAHB continues to remain concerned that tiered stream data will be unavailable for sites in New Hampshire. We request that NH DES and EPA staff work to coordinate efforts to ensure that methods for reviewing and identifying stream classification data are clearly posted on both agencies websites, and that datasets are complete before the 2017 CGP is finalized.

²⁶ Zhao, NA. How Long Does It Take to Build a Single-Family Home? Eye on Housing. August 17th, 2015. Online resource. Available: <http://eyeonhousing.org/2015/08/how-long-does-it-take-to-build-a-single-family-home/>

V. ADDITIONAL NAHB COMMENTS

A. EPA failed to recognize the draft CGP as rulemaking and failed to comply with the Regulatory Flexibility Act (RFA)

Recognizing that small businesses are frequently disproportionately impacted by federal regulations, Congress enacted the Regulatory Flexibility Act (RFA) in 1980. The RFA requires federal agencies to analyze the economic impact of proposed regulations when there is likely to be a significant economic impact on a substantial number of small entities, including small businesses, small non-profit enterprises, and small local governments.²⁷ The RFA applies to any rule subject to notice and comment rulemaking under Section 553(b) of the Administrative Procedure Act (APA) or any other law.

Regrettably, EPA failed first to issue the draft CGP as a proposed rule and second to comply with requirements of the RFA when it issued the notice for the draft CGP.

The Draft CGP is a Proposed Rule Subject to the RFA

When EPA issued the draft CGP on April 11, 2016, it did so as a “notice.”²⁸ Via email correspondence on May 26, 2016, EPA Office of Water staff informed NAHB that “NPDES general permits are not rules and therefore are not subject to review under . . . the Regulatory Flexibility Act.”²⁹

Contrary to EPA’s actions and statements, however, federal courts have ruled that CWA permits are in fact rules under the APA and therefore subject to the RFA. In *Nat’l Ass’n of Home Builders v. U.S. Army Corps of Engineers*,³⁰ the D.C. Circuit Court of Appeals held that “Corps” issued general permits “easily fit[] within the APA’s definition of ‘rule.’”³¹ What’s more, such statements contradict EPA’s previous commitment within 2008 renewal of the NPDES General Permit for Stormwater Discharges from Industrial Activities in which it stated, “the Agency commits that it will apply the RFA in its issuance of general permits as if those permits do qualify as ‘rules’ that are subject to the RFA . . . [and] in satisfaction of the Agency’s commitment, EPA will apply the RFA’s framework and requirements in any future MSGP proceeding as well as in the Agency’s issuance of other NPDES general permits.”³² Thus, it’s clear that the Court’s reasoning and the Agency’s own commitment apply to the draft CGP.

²⁷ 5 U.S.C. § 601-612

²⁸ 69 Fed. Reg. at 21328.

²⁹ EPA Office of Water Email communication to NAHB Staff. May 26th, 2016.

³⁰ 417 F.3d 1272 (D.C. Cir. 2005).

³¹ *Id.* at 1284.

³² 73 Fed. Reg. at 56577 (Monday, September 29, 2008). EPA states the Agency will comply with the RFA requirements moving forward when reissuing CWA NPDES permits.

Pursuant to the APA, a rule is “the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy . . .”³³ In *Home Builders*, the Court found that a Corps general permit “authorize[s] a permittee to discharge dredged and fill material . . . [and] is a legal prescription of general and prospective applicability which the Corps has issued to implement the permitting authority the Congress entrusted to it in section 404 of the CWA.”³⁴ The CGP is no different. It authorizes a permittee to discharge pollutants from a construction site and is a legal prescription that the EPA issues to implement its permitting authority under section 402. Furthermore, in *Home Builders* the Court dismissed the government’s argument that the Corps permits were not “rules” because the Corps did not issue a notice of proposed rulemaking. It explained that it has “not hesitated to consider an agency pronouncement issued without meeting required APA procedures a rule.”³⁵

Thus, the CGP is an APA “rule.” Unfortunately, EPA unlawfully failed to propose the draft CGP as a rule.

Because the CGP is an APA rule, it also falls within the RFA’s *definition of a rule*, that states a rule is “any rule for which the agency publishes a general notice of proposed rulemaking pursuant to section 553(b) of this title, or any other law . . .”³⁶ Similar to *Home Builders*, the EPA failed to issue the draft CGP under APA section 553. However, as the D.C. Circuit Court explained the fact that the EPA failed to propose the CGP as a rule under section 553, as it should have, does not insulate it from the RFA’s definition of a rule.³⁷

EPA Failed to Comply with the RFA

When an agency issues a rulemaking proposal, the RFA requires the agency to prepare and make available for public comment an initial regulatory flexibility analysis (IRFA) or certify the proposal will not have a significant impact on a substantial number of small entities. The RFA places specific procedural and substantive analysis requirements upon agencies to assess the economic impact of any proposed action upon small entities.

In the “Analysis of Economic Impacts” section of the draft CGP notice EPA states, “. . . while there may be some incremental increase in the costs of complying with the new permit, these costs will not have a significant economic impact on a substantial number of small entities.”³⁸ Despite this statement, the agency has not provided the required certification under the RFA. In essence, EPA has created a non-existent third option for complying with the RFA that is not supported by the statute, regulation, or relevant case law. For example, the economic analysis provided within the public notice docket for the draft CGP makes no attempt to quantify the

³³ 5 U.S.C. § 551(4).

³⁴ 417 F.3d at 1284.

³⁵ *Id.* at 1285.

³⁶ 5 U.S.C. § 601.

³⁷ 417 F.3d at 1284-85.

³⁸ 69 Fed. Reg. at 21334 (Monday, April 11, 2016)

number of small entities subject to the draft CGP as required under the RFA.^{39,40} Furthermore, EPA's economic analysis fails to analyze all of the proposed changes to the CGP including such proposed or possible measures as requiring all CGP applicants to electronically digitize and maintain a specific website for an entire SWPPP or portion of a SWPPP.

To comply with the RFA, EPA must re-propose the draft CGP by issuing another Federal Register notice that either includes a statement by EPA certifying the RFA does not apply or include a reference to an IRFA that quantifies the number of small entities within those states where EPA is the permitting authority. Furthermore, if EPA determines it must prepare an IRFA their analysis must evaluate all proposed new requirements under the CGP, not a piecemeal list of proposed CGP requirements as the agency has done under the economic analysis provided in the public notice docket.⁴¹

B. Individual BMP specifications contained within a SWPPP are not enforceable

NAHB members report that EPA Regional enforcement offices are inconsistent in how much weight individual best management practice (BMP) specifications are given during compliance inspections. NAHB holds that a system in which inspectors hold permittees accountable to BMP specifications to the nearest inch (e.g., how deep a silt fence is dug into the ground) is both impracticable and unlawful. A SWPPP is intended to be a living, flexible document. If a SWPPP ceases to reflect activity on a site, it must be modified within a certain timeframe.⁴² It follows that EPA enforcement by law can only hold site operators accountable for permit requirement violations, not specific details contained within daily compliance plans.⁴³ NAHB requests language be added to Part 7.0 specifying that individual BMP design and maintenance specifications provided within a SWPPP may not be considered permit requirements.

C. Requested modifications to Small Lot SWPPP Template

NAHB requests that EPA modify the *Small Lot SWPPP Template* to allow single-family builders to incorporate by reference existing ESA, historic preservation and wetland surveys conducted by developer of the subdivision. Many small builders have reported that gathering environmental

³⁹ "Cost Impact Analysis for the 2017 Proposed Construction General Permit (CGP)." EPA. 2016.

⁴⁰ 5 U.S.C. §603(b)(3)

⁴¹ "Cost Impact Analysis for the 2017 Proposed Construction General Permit (CGP)." EPA. 2016.

⁴² See 2017 Draft CGP, Page 33. Proposed permit requires operators to update SWPPP within 7 days "Whenever new operators become active in construction activities on your site, or you make changes to your construction plans, stormwater controls, or other activities at your site that are no longer accurately reflected in your SWPPP. This includes changes made in response to corrective actions triggered under Part 5. You do not need to modify your SWPPP if the estimated dates in Part 7.2.3.f change during the course of construction".

⁴³ See *Envtl. Prot. Info. Ctr. v. Pac. Lumber Co.*, 430 F. Supp. 2d 996, 1010 (N.D. Cal. 2006) ("a SWPPP is merely a [d]ocument that contains practices and procedures that are designed in order to reduce or prevent industrial pollutants in storm water discharges. . . . SWPPPs do not explicitly address a permittee's past discharges of pollutants but rather detail those practices a permittee will use to prevent such discharges.") (Internal quotations omitted).

site data is one of the most time consuming and costly parts of the compliance process. By signing off on the fact that the larger developer has already completed these studies for the same site and results are negative, smaller operators will not be signing away their *liability* for assuring that this data is correct. Rather, they will simply be acknowledging that a determination has already been completed to their satisfaction.

D. *Termination of Coverage*

Current language pertaining to termination of coverage for sites with multiple operators can be interpreted as leaving larger operators liable for site activities long after they should be.⁴⁴ In addition, EPA's 2017 fact sheet describes further that, "If portions of the common plan project that are described by the operator in the original NOI are eligible for termination, but other portions are still undergoing active construction or are yet to be started, then the operator will be required to wait until all permitted portions of the project are completed."⁴⁵ It does not appear that this fact sheet language is reflective of permit conditions. If not, it should be removed. Permit coverage is required during construction activities. Once those activities have ceased, operators have no obligations under the CWA.

E. *Administration of CGP on Sites with Multiple Operators*

How the CGP applies on sites with multiple owners and operators has never been clear. Although EPA specifically requires 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 to obtain permit coverage, we do not yet have an approach that demonstrates full understanding of the complexities of the construction industry. The issuance of the *Single Lot Template* was an important step in the right direction, but there are still many issues that must be addressed.

For example, through the CGP the Agency is monitoring and regulating the transport of sediment both on a lot-by-lot basis, as well as within the larger property or subdivision that has also obtained permit coverage. This is duplicative and analogous to EPA regulating automobile emissions not just from locations that emit from a vehicle's tailpipe, but from those that pass from the engine manifold to the catalytic converter. Furthermore, it surpasses the agency's authority by regulating the subdivision's "internal waste stream" instead of solely the discharge of pollutants over which it has statutory purview.⁴⁶

The fact that many of the proposed revisions and provisions for which EPA is soliciting comment are directly related to this question of coverage, responsibility and permitting for multi-

⁴⁴ See 2017 Draft CGP, Page 34, "Conditions For Terminating CGP Coverage".

⁴⁵ 2017 Draft Fact sheet, page 23

⁴⁶ See, for example, *Natural Resources Defense Council, Inc. v. Environmental Protection Agency*, 859 F.2d 156, 170 (D.C.Cir.1988), the CWA "does not empower the agency to regulate point sources themselves; rather, EPA's jurisdiction under the operative statute is limited to regulating the discharge of pollutants." And *Am. Iron & Steel Inst. v. EPA*, 115 F.3d 979, 996 (D.C. Cir. 1997), which ruled that the Agency may not regulate the pollutant levels in a facilities internal waste stream.

operator sites indicates that EPA is aware of the challenges and is seeking solutions. However, the alternatives EPA has suggested to rectify shared operator liability and combine efforts through shared SWPPPs are moving in the wrong direction and are simply unworkable. Because of the breadth of this issue, the many factors that must be thoroughly vetted and considered, and the potential for a large shift in the administration of the permit, we strongly urge EPA to refrain from making any significant changes related to multi-operator issue at this time. Instead, the Agency should work with stakeholders to identify alternative policy options and re-propose any related permit changes at a later time.

F. BMP Based Approach to Controlling Stormwater

Permitting authorities have relied upon BMP-based technology approaches extensively in stormwater permitting.⁴⁷ As far back as 1977, courts have recognized that there are circumstances when numeric effluent limitations are infeasible and have held that EPA may issue permits with conditions (e.g., BMPs) designed to reduce the level of effluent discharges to acceptable levels.⁴⁸ And, as recently as 2006, The U.S. Court of Appeals for the Sixth Circuit has once again held that the CWA does not require the EPA to set numeric limits where such limits are infeasible.^{49, 50} Similarly, the use of BMPs allows operators to enhance their controls when discharging into degraded water bodies. This retains the flexibility required on construction sites. EPA has substantial discretion to impose non-quantitative permit requirements pursuant to Section 402(a)(1) of the CWA, especially when the use of numeric limits is infeasible.⁵¹ We encourage the Agency to continue to employ the BMP approach in the general permit context, as its use to date has demonstrated it is an effective way to reduce pollutants.

⁴⁷ 40 C.F.R. §122.44(k) (specifically authorizing narrative BMPs in lieu of numeric effluent limits for stormwater discharges regulated pursuant to CWA Section 402(p)). BMPs include “schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce . . . pollution.” *Id.* § 122.2.

⁴⁸ *Natural Res. Def. Council, Inc. v. Costle*, 568 F.2d 1369 (D.C.Cir.1977).

⁴⁹ *Citizens Coal Council v. EPA*, 447 F.3d 879, 895-96 (6th Cir. 2006). The Citizens Coal court cited to *Waterkeeper Alliance, Inc. v. EPA*, 399 F.3d 486, 502 (2nd Cir. 2005), stating “site-specific BMPs are effluent limitations under the CWA.”

⁵⁰ Additionally, the Sixth Circuit cited to *Natural Res. Def. Council, Inc. v. EPA*, 673 F.2d 400, 403 (D.C.Cir.1982) noting that “section 502(11) [of the CWA] defines ‘effluent limitation’ as ‘any restriction’ on the amounts of pollutants discharged, not just a numerical restriction.”

⁵¹ See *NRDC v. EPA*, 822 F.2d 104, 122-24 (D.C. Cir. 1987); see also 40 C.F.R. § 122.44(k)(3).

VI. APPENDIX

- A. JOINT SWPPP CASE STUDY
- B. PUBLIC AVAILABILITY OF SWPPP CASE STUDY



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MEMORANDUM

May 11, 2016

TO: Eva Birk, NAHB cc: Jack Milarch

FROM: Melanie Lawton

RE: Case Study – EPA 2017 CGP – NAHB TRK#8: Possible Joint SWPPPs Ramifications

Background:

In 2004 NMHBA purchased 5 vacant lots of approximately 1 ac. each in the Journal Center Phase 2 commercial development area of Albuquerque, NM. The area had been graded by Franklin's Earthmoving Inc. in April of 2003 under NPDES Permit Number NMR15DK99 had been issued, and the Notice of Terminations (NOT) filed in August 2003.

NMHBA has sold 1-3/4 lots, but the other 3-1/4 lots remain vacant today. The City of Albuquerque is currently negotiating to extend a street through the middle of the lots, leaving 3 lots of varying sizes.

It should be noted that the NMHBA lots all abut Albuquerque Metropolitan Arroyo Flood Control Authority (AMAFCA) channels to take storm water runoff directly into the Rio Grande (the major river that runs through our state from the North to South.)

Under the 2012 CGP currently in force, and the City of Albuquerque's MS4 Permit, when the City begins to grade for the road extension, Franklin's Earthmoving Inc. will not be a party to the 2016 construction activity, having filed their NOT some 13 years ago.

The various Google Earth images that follow this memo illustrate the gradual construction within Journal Center 2 over the past 15 years.

Current Issue:

The EPA's proposals do not appear to take into account developments built out over many years. We have experienced an economic downturn that hit New Mexico in 2008, and from which we still have not seen much improvement, so our situation is not isolated.

For example, if the Journal Center 2 project began under the proposed Joint SWPPP concept, then it would appear that companies such as Franklin's Earthmoving Inc. would not be able to obtain an NOT for their portion of the project, and would still be financially liable for EPA fines decades later. For a small development company, this could prove fatal.

New Mexico's Indemnity Agreements law (§56-7-1 NMSA 1978) bars the shifting of liability for wrongful action via indemnification agreements. It effectively limits the "hold-harmless" clauses that would naturally come out of the "joint" responsibility EPA is seeking. So, if the landscaper did not complete the final stabilization that was required of him in the "joint SWPPP", then the grading contractor (whose work had been completed years earlier) could not be held liable for the fines issued by the EPA. This would lead to such a convoluted listing of responsibilities created by attorneys

seeking to protect the interests of each separate contractor that the EPA would never be able to sort out who was responsible for a particular violation. It could also delay the production of the SWPPP for many months as the attorneys for each construction company reviewed and made their own changes to the language.

If the City begins construction across our property before the final “t is crossed” on the sale of the portion they are taking, then NMHBA would be listed as an owner on the City’s road project, when NMHBA has nothing to do with the work. This could also create an exposure for NMHBA if AMAFCA features are disturbed or damaged by the City’s contractor.

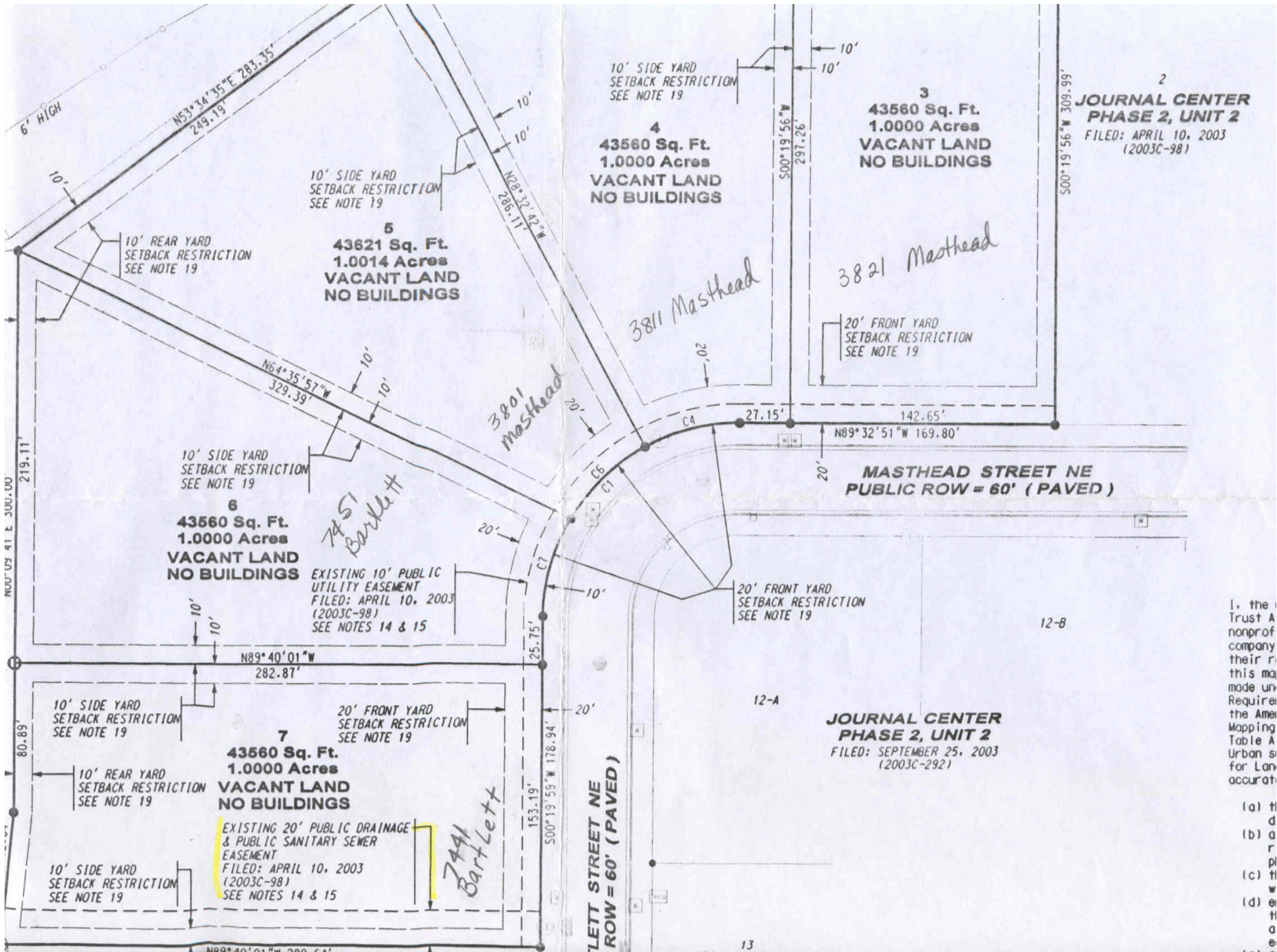
EPA’s current requirements for the owners and operators for a project have already caused huge fines for property owners on speculative projects in New Mexico. It has led to some ruined relationships between property owners and speculative home builders, severely restricting those types of projects unless the builder has sufficient capital to purchase the lot before construction begins.

If the “joint SWPPP” included every owner of an individual lot within a development, and every construction company that worked on each of the buildings constructed upon each lot, then the “joint SWPPP” could be an unwieldy document that is thousands of pages long. It would have to be completely revised as each new company were added when their piece of construction began, and the responsibilities for BMP maintenance on each lot changed.

Presumably no one on a “joint SWPPP” could obtain an NOT until the entire development had been completely built out. What a liability nightmare!

Proposed Solution:

None.



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- (h) a
- (i) e

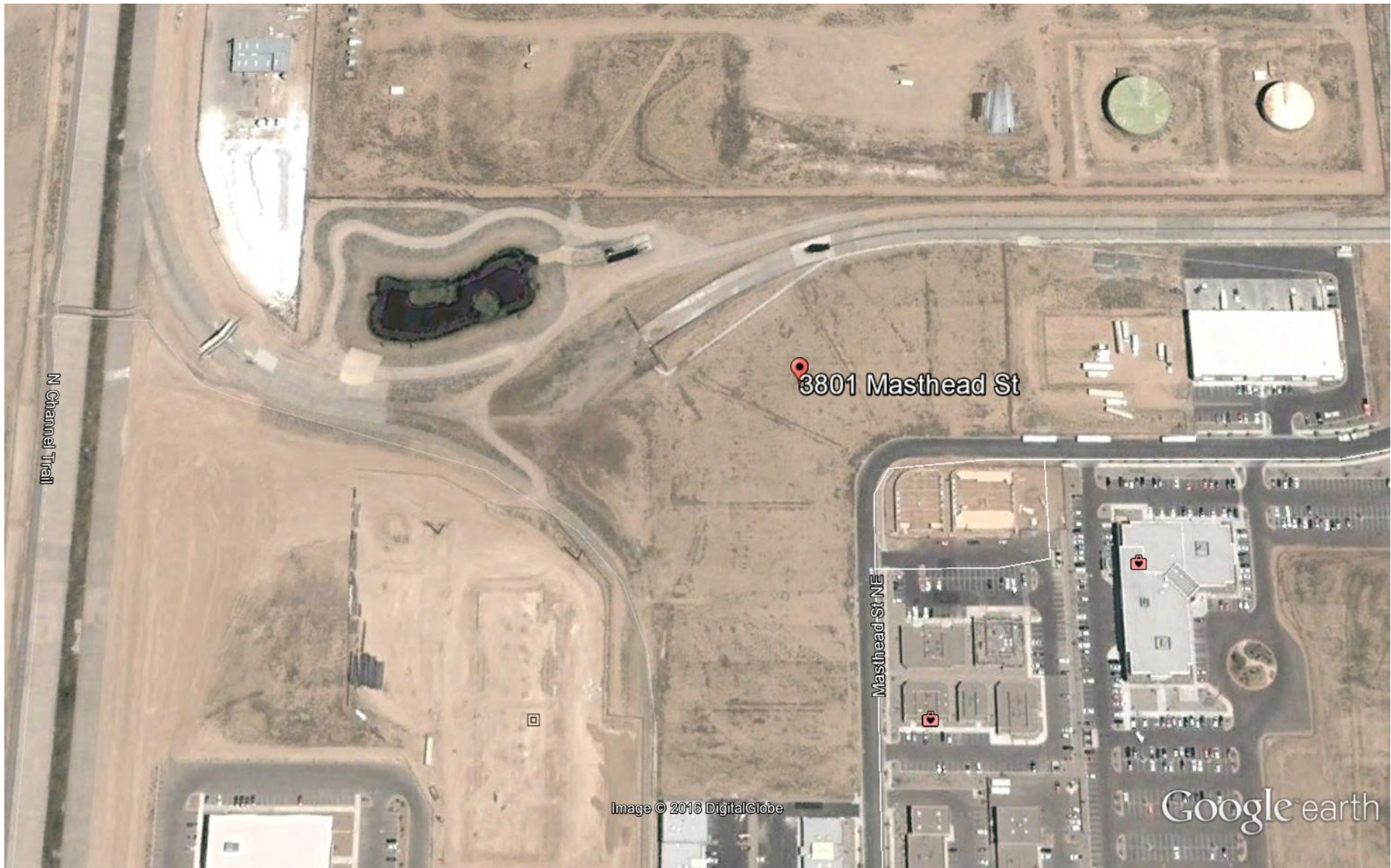


Google earth

feet
meters



New Mexico Home Builders Association vacant lots in the Journal Center Phase 2 development in Albuquerque, NM in July 2004

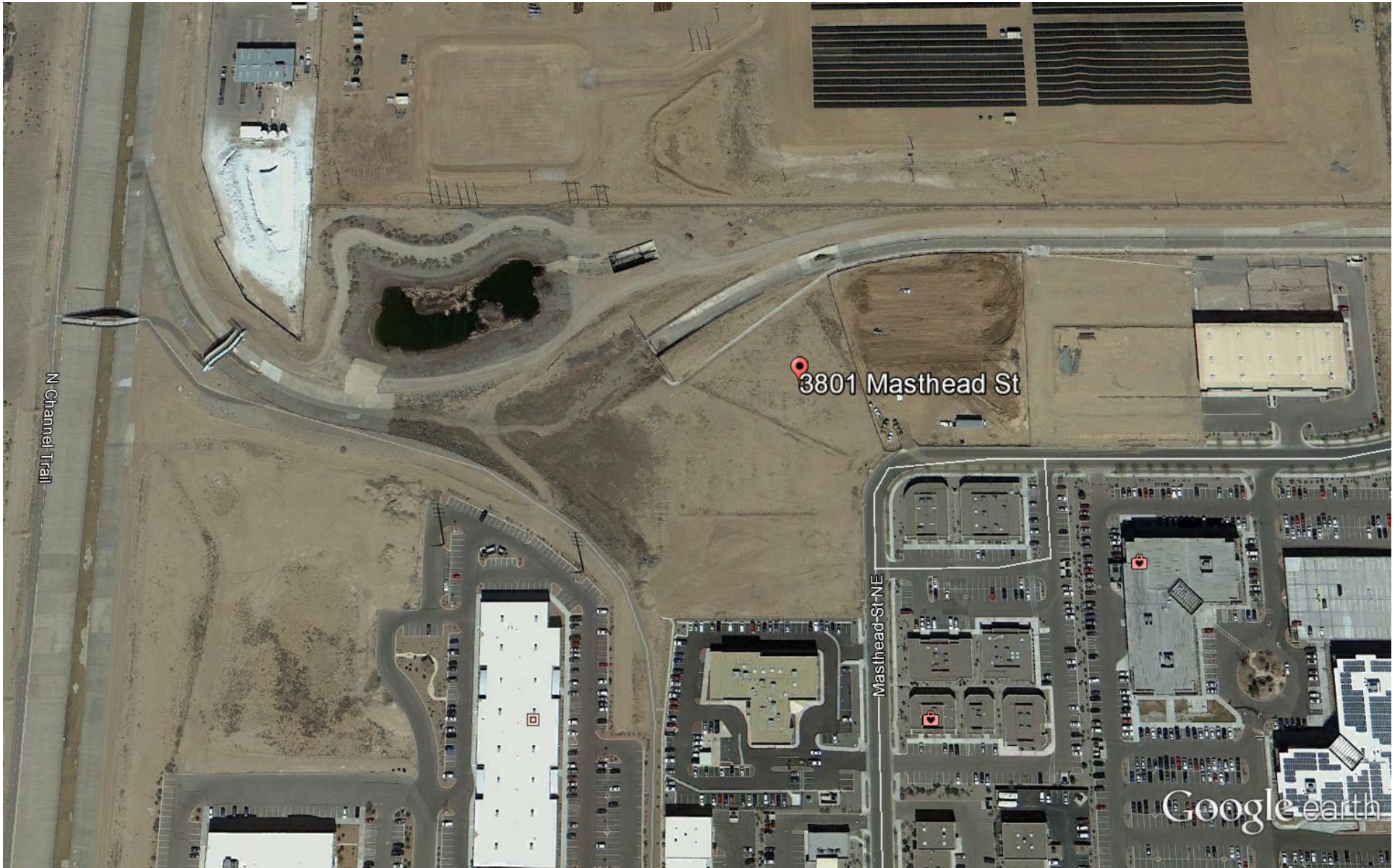


Google earth

feet
meters



New Mexico Home Builders Association vacant lots in the Journal Center Phase 2 development in Albuquerque, NM in July 2007



Google earth

feet
meters



New Mexico Home Builders Association vacant lots in the Journal Center Phase 2 development in Albuquerque, NM in March 2012



Google earth

feet
meters



New Mexico Home Builders Association vacant lots in the Journal Center Phase 2 development in Albuquerque, NM on Nov 1, 2015

56-7-1. Real property; indemnity agreements; agreements void.

A. A provision in a construction contract that requires one party to the contract to indemnify, hold harmless, insure or defend the other party to the contract, including the other party's employees or agents, against liability, claims, damages, losses or expenses, including attorney fees, arising out of bodily injury to persons or damage to property caused by or resulting from, in whole or in part, the negligence, act or omission of the indemnitee, its officers, employees or agents, is void, unenforceable and against the public policy of the state.

B. A construction contract may contain a provision that, or shall be enforced only to the extent that, it:

(1) requires one party to the contract to indemnify, hold harmless or insure the other party to the contract, including its officers, employees or agents, against liability, claims, damages, losses or expenses, including attorney fees, only to the extent that the liability, damages, losses or costs are caused by, or arise out of, the acts or omissions of the indemnitor or its officers, employees or agents; or

(2) requires a party to the contract to purchase a project-specific insurance policy, including an owner's or contractor's protective insurance, project management protective liability insurance or builder's risk insurance.

C. This section does not apply to indemnity of a surety by a principal on any surety bond or to an insurer's obligation to its insureds.

D. The state, a state agency or a political subdivision of the state may enter into a contract for the construction, operation or maintenance of a public transportation system, including a railroad and related facilities, that includes a continuous obligation to procure an insurance policy, including an owner's, operator's or contractor's protective or liability insurance, project management protective liability insurance, builder's risk insurance, railroad protective insurance or other policy of insurance against the negligence of another party to the contract. If the state, a state agency or a political subdivision of the state insured by the risk management division of the general services department enters into a contract to procure insurance as permitted by this section, the cost of any insurance shall be paid by the risk management division of the general services department and shall not be a general obligation of the state, the state agency or the political subdivision of the state.

E. As used in this section, "construction contract" means a public, private, foreign or domestic contract or agreement relating to construction, alteration, repair or maintenance of any real property in New Mexico and includes agreements for architectural services, demolition, design services, development, engineering services, excavation or other improvement to real property, including buildings, shafts, wells and structures, whether on, above or under real property.

F. As used in this section, “indemnify” or “hold harmless” includes any requirement to name the indemnified party as an additional insured in the indemnitor’s insurance coverage for the purpose of providing indemnification for any liability not otherwise allowed in this section.



5931 Office Blvd., NE – Suite #1
Albuquerque, NM 87109
Phone: (505) 344-7072
1-800-523-8421
FAX: (505) 344-3103

MEMORANDUM

May 11, 2016

TO: Eva Birk, NAHB cc: Jack Milarch
FROM: Melanie Lawton
RE: Case Study – EPA 2017 CGP – NAHB TRK#14: Public Availability of SWPPPs

Background:

In 2004 NMHBA purchased 5 vacant lots of approximately 1 ac. each in the Journal Center Phase 2 commercial development area of Albuquerque, NM. The area had been graded by Franklin's Earthmoving Inc. in April of 2003 under NPDES Permit Number NMR15DK99 had been issued.

NMHBA has sold 1-3/4 lots, but the other 3-1/4 lots remain vacant today. The City of Albuquerque is currently negotiating to extend Masthead St. through the middle of the lots, leaving 3 lots of varying sizes.

Contractors in New Mexico obtain their NPDES Permits directly from EPA Region 6. These permits are listed on the EPA's website at www.ofmpub.epa.gov, and include the following NOI detailed information:

- Operator Information
- Project/Facility Information (including GPS location)
- Estimated Start and Completion Dates and Estimated Area to be Disturbed
- SWPPP Contact Information
- Discharge Information that includes the receiving water(s) and whether or not the discharge is consistent with the assumptions and requirements of applicable EPA-approved or established TMDL(s)
- Endangered Species Information
- Certifying Party

When the NOI is issued, the form is added to the listing to include this information.

Current Issue:

EPA would like to see the entire SWPPP posted for an unknown duration of time on a website under the permittee's control.

There are numerous problems with this concept, including:

- The cost to a small business to maintain one or more websites (forever?) just to list the original SWPPPs for each project that may have been completed over a decade earlier. (As with Franklin's Earthmoving project completed in 2003, and still available on the EPA website 13 years later.)

- Original SWPPPs will be out of date within 14 days of posting if the initial inspection turns up any damage to BMPs (due to wind, vandalism, etc.) or sooner if a rain event of 0.25 inch occurs.
- It is difficult to locate old NPDES Permit information even when you know the operator's name and project location just on EPA's own database. It would be highly unlikely most people would be able to locate a particular SWPPP online if it were located online with only a URL to identify it. If the data isn't going to be posted on the EPA's website, the only purpose of this requirement is to create another paperwork requirement for fining permittees.
- As the EPA has begun moving enforcement down to the Municipal level through Watershed and MS4 Permits, it is increasingly likely the burden of maintaining a database of NPDES Permit information will fall on the shoulders of the MS4s. This will become just one more unfunded mandate that the local level will have to increase/implement a "rain tax" to cover.

Proposed Solution:

EPA appears to want something online at the time of NOI filing that will give an indication the project operator has truly prepared a SWPPP. It would seem from current eNOI information, the EPA has already resolved their problem.

However, if the EPA wants more, perhaps it would be appropriate for them to include in the eNOI form a checklist of BMPs such as that in the Small Lot Template that operators could just check the boxes showing the intended BMPs at the time of filing the NOI.

The time delay between the operator's filing the eNOI and the issuing of the NPDES Permit is supposed to be so the EPA has the opportunity to briefly review the submission and allow the general public to raise an issue prior to the start of construction. Simply adding the BMP information should be adequate for this purpose without holding up issuance of a permit.



You are here: Permits Landing Page 2008 CGP

2008 Construction General Permit (CGP) Search Page

Quick Jump to Other Permits

This page provides the ability to search for NOIs submitted under EPA's 2008 Construction General Permit and LEWs submitted prior to September 10, 2013. To view NOIs submitted under EPA's 2012 CGP or LEWs submitted on or after September 10, 2013, go to the Construction General Permit Public Search page.

Search results will be presented in a table; however, you can also download more detailed information on the eNOI's identified in these search results into an excel spreadsheet, or an HTML file, which can be saved to your desktop for further review and analysis.

Search for 2008 CGP NOIs, NOTs, and LEWs

Permit Information

Permit Tracking Number:
 Permit Type:
 Status:
 EPA Region:
 Date Type: Between: And:

[+ Show Status Definitions](#)

Site/Facility Information

Name:
 City:
 State:
 Zip:

Owner/Operator Information

Name:
 City:
 State:
 Zip:

Search


Reset

Filter Search Results

Rows 15 Actions

Tracking Number	Date Submitted	Start Date of Coverage	Operator Name	Project/Site Name	Project County	Project City	Project State	Status
NMR15DL54	07/26/2003	08/02/2003	FRANKLIN'S EARTHMOVING INC	ENCHANTED HILLS UNIT 10	Sandoval	RIO RANCHO	NM	Expired
NMR15DK97	08/08/2003	08/15/2003	FRANKLIN'S EARTHMOVING INC	DESERT RIDGE TRAILS NORTH	Bernalillo	ALBUQUERQUE	NM	Expired
NMR15DK99	08/08/2003	08/15/2003	FRANKLIN'S EARTHMOVING INC	JOURNAL CENTER PHASE 2	Bernalillo	ALBUQUERQUE	NM	Expired

NMR15DL10	08/11/2003	08/18/2003	FRANKLIN'S EARTHMOVING INC	LA ESTANCIA	Bernalillo	ALBUQUERQUE	NM	Expired
NMR15DL53	08/29/2003	09/05/2003	FRANKLIN'S EARTHMOVING INC	DESERT PINE SUBDIVISION UNIT 4	Bernalillo	ALBUQUERQUE	NM	Expired
NMR15DM02	09/16/2003	09/23/2003	FRANKLIN'S EARTHMOVING INC	ANDERSON HILLS SUBDIVISION	Bernalillo	ALBUQUERQUQ	NM	Expired
NMR15DU07	10/15/2003	10/22/2003	FRANKLIN'S EARTHMOVING INC	RIO OESTE	Bernalillo	ALBUQUERQUE	NM	Expired
NMR15DU08	10/15/2003	10/22/2003	FRANKLIN'S EARTHMOVING INC	WESTRIDGE SUBDIVISION	Bernalillo	ALBUQUERQUE	NM	Expired
NMR15D019	10/22/2003	10/29/2003	FRANKLIN'S EARTHMOVING INC	PETROGLYPH GARDENS	Bernalillo	ALBUQUERQUE	NM	Expired
NMR15D024	10/24/2003	10/31/2003	FRANKLIN'S EARTHMOVING INC	LOS MORROS BUSINESS PARK	Valencia	LOS LUNAS	NM	Expired
NMR15D025	10/24/2003	10/31/2003	FRANKLIN'S EARTHMOVING INC	WILLOW TRACE	Sandoval	RIO RANCHO	NM	Expired
NMR15D081	11/05/2003	11/12/2003	FRANKLIN'S EARTHMOVING INC	WEST RIDGE SUBDIVISION	Bernalillo	ALBUQUERQUE	NM	Expired
NMR15D080	11/05/2003	11/12/2003	FRANKLIN'S EARTHMOVING INC	RIO OESTE	Bernalillo	ALBUQUERQUE	NM	Expired
NMR15D110	11/07/2003	11/14/2003	FRANKLIN'S EARTHMOVING INC	MIRADOR DEL SOL	Sandoval	RIO RANCHO	NM	Expired
NMR15D108	11/07/2003	11/14/2003	FRANKLIN'S EARTHMOVING INC	CIELO GRANDE SUBDIVISION	Sandoval	RIO RANCHO	NM	Expired

1 - 15 of 144 

release 1.4



You are here: [Permits Landing Page](#) [2008 CGP](#) [2008 CGP Details](#)

2008 Construction General Permit

Notice of Intent Details

Details for Permit: NMR15DK99

General Information

Date Submitted:	08/08/2003
Current Status:	Expired

Operator Information

Name:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Project / Facility Information

Project / Site Name:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Is facility/project located on Indian Land?

No

Reservation Name:

N/A

Project/Site Information

Estimated Start Date:

04/22/2003

Estimated Completion Date:

12/08/2003

Estimated Area to be Disturbed (to the nearest quarter acre):

41

SWPPP Information

SWPPP Contact Name:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Discharge Information

Receiving water(s):

▶ *RIO GRANDE*

Is this discharge consistent with the assumptions and requirements of applicable EPA approved or established TMDL(s)? Yes

Endangered Species Information

I have satisfied permit eligibility with regard to protection of endangered species through the indicated se under criterion A .

Certification

Certified by:

[Redacted]
[Redacted]
[Redacted]
[Redacted]

[Redacted]
[Redacted]
[Redacted]
[Redacted]

Termination

Termination Certified By:

[Redacted]

Title:

[Redacted]
[Redacted]
VP

Correspondence Documents

File Name	Description	Created Date
NMR15DK9920050218122816.pdf	CGP NOI Form	03/24/2004

[Back to Search Results](#)

 [Printer Friendly](#)

release 1.4

NPDES
Form



United States Environmental Protection Agency
Washington, DC 20460

**Notice of Termination (NOT) of Coverage Under an NPDES General Permit for Storm
Water Discharges Associated with Construction Activity**

Submission of this Notice of Termination constitutes notice that the party identified in Section II of this form is no longer authorized to discharge storm water associated with construction activity under the NPDES program from the site identified in Section III of this form. All necessary information must be included on this form. Refer to the instructions at the end of this form.

I. Permit Information

NPDES Storm Water General Permit Tracking Number: NMR15DK99

Reason for Termination (Check only one):

- Final stabilization has been achieved on all portions of the site for which you are responsible.
- Another operator has assumed control, according to Appendix G, Section 11.C of the CGP, over all areas of the site that have not been finally stabilized.
- Coverage under an alternative NPDES permit has been obtained.
- For residential construction only, temporary stabilization has been completed and the residence has been transferred to the homeowner.

II. Operator Information

Name: [REDACTED]
IRS Emp: [REDACTED]
Mailing Address:
Street: [REDACTED]
City: A State: NM Zip Code: [REDACTED]
Phone: (505) - [REDACTED] - [REDACTED] Fax (optional): [REDACTED]
E-mail (optional): [REDACTED]

III. Project/Site Information

Project/Site Name: JO
Project Street/Location: [REDACTED]
City: ALBUQUE State: NM Zip Code: 87109
County or similar government subdivision: Bernalillo

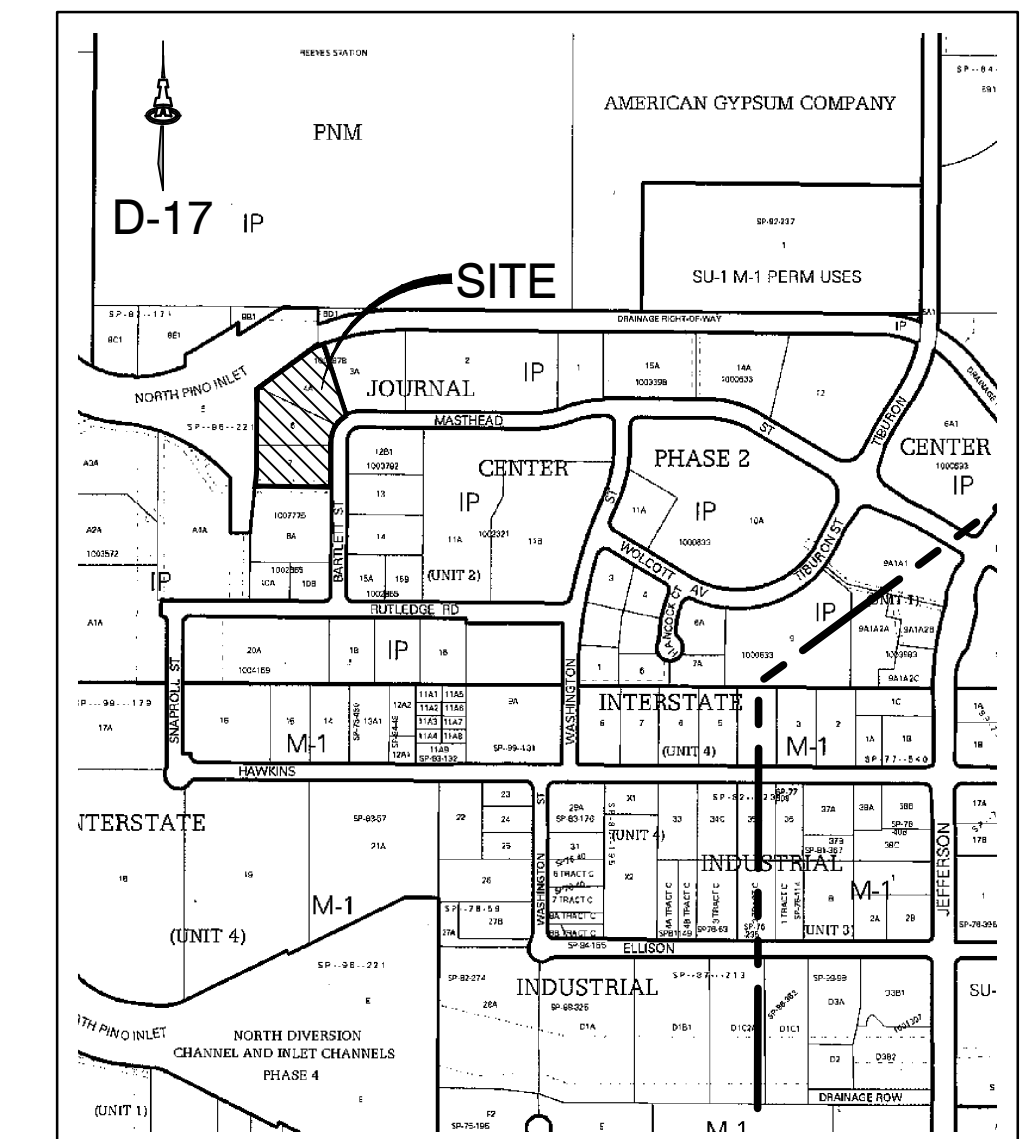
IV. Certification Information

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Print Name: [REDACTED]
Print Title: VP
Signature: MR. JOHN W. ELLIS
Date: 2003-08-08 00:00:00.0

SKETCH PLAT FOR JOURNAL CENTER PHASE 2, UNIT 2

CITY OF ALBUQUERQUE
BERNALLILLO COUNTY, NEW MEXICO
MARCH 2015
REV. JAN. 2016



CURVE TABLE						
CURVE	LENGTH	RADIUS	DELTA	CHORD DIRECTION	CHORD LENGTH	TANGENT
C1	37.97'	20.00'	108°46'45"	N 51°47'47" W	32.52'	27.92'
C2	40.27'	678.54'	3°24'03"	S 72°03'07" W	40.27'	20.14'
C3	223.21'	675.00'	18°56'47"	N 80°41'18" E	222.19'	112.63'
C4	171.27'	620.00'	15°49'41"	N 82°14'51" E	170.73'	86.19'
C5	24.16'	620.00'	2°13'57"	N 73°13'02" E	24.16'	12.08'
C6	8.10'	620.00'	0°44'56"	N 71°43'35" E	8.10'	4.05'
C7	170.59'	680.00'	14°22'25"	S 78°32'20" W	170.14'	85.75'

INFRASTRUCTURE / DEVELOPMENT COST	
DEVELOPER	C.O.A. - D.M.D
<ul style="list-style-type: none"> PRELIMINARY / FINAL PLAT MODIFY APPROVED GRADING / DRAINAGE PLAN 5' PCC SIDEWALKS ALONG LOT FRONTAGES 	<ul style="list-style-type: none"> LAND / ROW ACQUISITION CONSTRUCT MASTHEAD ST. EXTENSION 8" WATERLINE TO WEST PROPERTY LINE 4" SAS SERVICE EXTENSION TO LOT 5-A NEW SAS SERVICE TO LOT 6-A 1 1/2" WATER SERVICE TO LOTS 5-A & 6-A NEW FIRE LINES TO LOTS 6-A & 5-A. NEW FIRE HYDRANTS. <ol style="list-style-type: none"> SE CORNER - LOT 5A NE CORNER - LOT 7-A

FIRE FLOW DATA				
LOT No.	LOT SIZE (AC.)	F.A.R.	BUILDING SIZE (S.F.)	BUILDING TYPE
5-A	0.7912	0.35	12,069	V-N
6-A	0.6436	0.35	9,812	V-N
7-A	1.285	0.35	17,205	V-N

LEGAL DESCRIPTION
LOTS 5-A, 6-A, 7-A & 7-B
JOURNAL CENTER, PHASE 2

NOTES

- NUMBER OF EXISTING TRACTS: 3
- NUMBER OF PROPOSED TRACTS: 3
- SUBDIVISION ACREAGE: 3.0 Ac.
- ZONING: IP

OWNER

BUILDERS TRUST OF NEW MEXICO
5931 OFFICE BLVD. N.E.
ALBUQUERQUE, NM 87109



ESRI UTILITY DATA

