

## Clean Water Act UPCOMING EPA ACTIONS

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### 1. Construction General Permit

#### *Background Information*

Stormwater discharges from construction activities (such as clearing, grading, excavating, and stockpiling) that disturb one or more acres, or smaller sites that are part of a larger common plan of development or sale, are regulated under the National Pollutant Discharge Elimination System (NPDES) stormwater program. Prior to discharging stormwater, construction operators must obtain coverage under an NPDES permit, which for construction activities on tribal lands is administered by EPA.

Almost all construction stormwater discharges from projects in Indian country are permitted under the Construction General Permit (CGP). The existing CGP requires compliance with effluent limits and other permit requirements, such as the development of a stormwater pollution prevention plan. Construction operators intending to seek coverage under EPA's CGP must submit a Notice of Intent (NOI) certifying that they have met the permit's eligibility conditions and that they will comply with the permit's effluent limits and other requirements. To submit the NOI, the operator may use the eNOI system (or electronic NOI system), which is found on-line at <http://cfpub1.epa.gov/npdes/stormwater/enoi.cfm>

On April 25, 2011, EPA proposed to make a modification to the existing CGP to extend its expiration date from June 30, 2011 to January 31, 2012. On April 25, 2011, EPA also proposed to issue a new CGP incorporating additional controls on construction site runoff. The new CGP will go into effect after January 2012.

#### *Potential impacts to tribes*

EPA expects the CGP may affect interests of some tribes and private parties because the revised permit, like the existing CGP, will establish water pollution control requirements for construction sites that disturb one acre or more. These requirements should assist in protecting water quality in waters that receive construction site runoff. Although many construction projects are required to implement erosion and runoff controls under the existing CGP, we expect the new CGP will incorporate somewhat more protective and potentially more costly site runoff, pollution prevention, and erosion control requirements. If you have questions about this permit, you may e-mail Eugene Bromley at [bromley.eugene@epa.gov](mailto:bromley.eugene@epa.gov) or call (415) 972-3510.

#### **Tentative Timeline:**

April 25, 2011 – EPA proposed to modify the existing CGP to extend its expiration date and proposed a new CGP  
May 24, 2011 – EPA public webcast on the new CGP  
May 25, 2011 – close of public comment period for the CGP modification  
July 11, 2011 – close of public comment period for the new proposed CGP  
July 28, 2011 – RTOC meeting in San Francisco - additional opportunity for discussion and Tribal input

January 2012 – issuance of new CGP  
February 1, 2012 – new CGP goes into effect

### 2. Vessel General Permit

#### *Background Information*

EPA's NPDES Vessel General Permit (VGP) regulates incidental discharges from the normal operation of vessels. Issued in 2008, the VGP does not regulate sewage discharges or discharges from military vessels, commercial fishing vessels, recreational vessels, and with the exception of ballast water discharges, vessels less than 79 feet in length. Vessel sewage discharges are regulated under different provisions of Section 312 of the Clean Water Act. Discharges regulated under the VGP include, but are not limited to, ballast water, bilgewater, graywater (e.g., water from sinks, showers), and anti-foulant paints (and their leachate). These discharges may result in negative environmental impacts via the addition of traditional pollutants or, in some cases, by contributing to the spread of Aquatic Invasive Species.

The VGP includes general effluent limitations for 26 specific discharge streams; narrative water quality-based effluent limits; inspection, monitoring, recordkeeping, and reporting requirements; and additional requirements applicable to certain vessel types.

The existing VGP expires on December 19, 2013. EPA is beginning research and development of the next VGP. EPA plans to propose a new VGP by November, 2011 and take final action on the new VGP by November, 2012, a full year before the expiration of the existing VGP.

#### *Potential Impacts to Tribes*

EPA expects the new VGP may affect interests of some tribes and private parties because the revised permit, like the existing VGP, will establish water pollution control requirements for certain discharges from vessels. These requirements should assist in protecting water quality in waters that receive vessel discharges. Many vessels are covered under the current VGP, and the new VGP may incorporate somewhat more protective and potentially more costly control and reporting requirements. The new VGP (or an alternate general permit) will also extend permit coverage to fishing vessels and additional non-recreational vessels less than 79 feet in length. We expect the new permit (or permits) will have impacts only on those tribes that operate these vessels or have interests in waters on which these vessels routinely operate. If you have questions about this permit, you may e-mail Eugene Bromley at [bromley.eugene@epa.gov](mailto:bromley.eugene@epa.gov) or call (415) 972-3510.

#### **Timeline:**

July 28, 2011 – RTOC meeting in San Francisco – update on the VGP status  
November 30, 2011 – proposal of VGP  
November 30, 2012 – final issuance of VGP

### 3. NPDES Stormwater Permitting Rulemaking

#### *Background Information*

Since the 1987 amendments to the Clean Water Act, operators of many municipal stormwater systems have been required to receive an NPDES permit before they can discharge stormwater to waters of the U.S. EPA issues NPDES stormwater permits to regulate stormwater discharges in most tribal areas, and most states have been delegated authority to issue NPDES permits. This permitting mechanism is designed to prevent stormwater runoff from washing harmful pollutants into local surface waters. EPA has initiated a national rulemaking to establish a program to reduce stormwater discharges from newly developed and redeveloped areas and make other regulatory improvements to strengthen its existing municipal stormwater permitting program.

Polluted stormwater discharges are an important cause of water quality impairment in many areas of the country. EPA is considering establishing new national requirements to use practices that retain stormwater on-site through infiltration, evapotranspiration, or stormwater reuse to reduce these impacts nationwide. EPA is considering how to strengthen the municipal separate storm sewer system (MS4) permit regulations, including expanding the MS4 regulated area to include rapidly developing areas and establishing specific post construction requirements for stormwater discharges from new development and redevelopment, both inside and outside the MS4 boundary, that may be contributing to waterbody impairments. EPA is also considering clarifying and strengthening other permit requirements for existing municipal stormwater management systems.

In 2010, EPA began assembling information needed to prepare a NPDES stormwater rule. EPA held several public "listening sessions" on the rule including a session in San Francisco in January 2010 and a national "virtual listening session" on February 3, 2010. In late summer, 2011, EPA expects to release for public review and comment a draft stormwater permitting rulemaking. EPA plans to issue a final stormwater rule in late 2012.

#### *Potential impacts to tribes*

EPA expects the stormwater permitting rule may affect interests of some tribes and private parties because the rule will likely revise and extend water pollution control requirements for discharges of stormwater in many urban areas, including some areas on or upstream from tribal lands. These requirements should assist in protecting water quality in waters that receive urban stormwater runoff. Tribal interests that may be affected by the permit include establishment of additional post-construction controls on stormwater runoff from projects on or near tribal lands, and stronger controls on stormwater runoff in already-developed urban areas. As most tribal lands are relatively distant from the highly urbanized areas that are the focus of the NPDES stormwater permitting program, many tribes will not be significantly affected by this rulemaking. However, the stormwater rule may result in establishment of more protective and potentially more costly urban runoff control requirements. If you have questions about this permit, you may e-mail Eugene Bromley at [bromley.eugene@epa.gov](mailto:bromley.eugene@epa.gov) or call (415) 972-3510.

#### **Tentative Timeline:**

Late summer, 2011 – proposal of stormwater rule and public comment period  
Late 2012 – final issuance of stormwater rule

## **4. Cooling Water Intake Regulations**

#### *Background Information*

Clean Water Act Section 316(b) requires that NPDES permits for facilities with cooling water intake structures (e.g., large power generating stations and some large manufacturing facilities) ensure that the location, design, construction, and capacity of the structures reflect the best technology available to minimize harmful impacts on the environment. The withdrawal of cooling water by facilities removes billions of aquatic organisms from waters of the United States each year, including fish, fish larvae and eggs, crustaceans, shellfish, sea turtles, marine mammals and other aquatic life. Most impacts are to early life stages of fish and shellfish.

In March, 2011, EPA proposed regulations to reduce injury and death of fish and other aquatic life caused by cooling water intake structures existing at power plants and factories. Federal rules are already in place to regulate new cooling water intake structures. By setting flexible technology standards, EPA's proposed rule is intended to greatly reduce damage to ecosystems while accommodating site-specific circumstances and providing cost effective options. This rule covers roughly 1,260 existing facilities that each withdraws at least 2 million gallons per day of cooling water. The technologies required under the rule have been in use for several decades and have been implemented at a large number of facilities. While the public comment period closes July 19, 2011, there is still time for interested tribes to request consultation with EPA prior to the issuance of a final rule. Under the terms of a settlement agreement with environmental groups, EPA is required to issue the final rule by July 2012.

#### *Potential impacts to tribes*

EPA expects the cooling water intake rule may affect interests of a few tribes whose lands are located near or downstream from facilities with cooling water intake systems that would be regulated under the new rule. The rule will likely strengthen requirements intended to minimize adverse environmental impacts of existing cooling water intakes that withdraw at least 2 million gallons per day of cooling water. As few facilities with cooling water intakes affected by this rule are located on or close to tribal lands in Region 9, many tribes will not be significantly affected by this rulemaking. However, the cooling water intake rule may result in establishment of more protective and potentially more costly cooling water intake requirements for affected facilities. If you have questions about these regulations, you may e-mail Jamie Marincola, EPA Region 9 Permit Specialist, at [marincola.jamespaul@epa.gov](mailto:marincola.jamespaul@epa.gov), or call (415) 972-3520.

#### **Tentative Timeline:**

March 2011- proposal of cooling water intake rule and beginning of public comment period  
July 19, 2011 – public comment period on cooling water intake rule closes  
July 2012 – final issuance of cooling water intake

## **5. NPDES Permitting Updates Rulemaking**

#### *Background Information*

Since the Clean Water Act's establishment and subsequent revisions, EPA has promulgated several rules to implement the Act's permitting provisions. These rules define the types of facility discharges that require NPDES permits, procedures for applying for permits, program delegation procedures, and permit issuance requirements for permitting authorities. Several elements of the NPDES regulations have not been updated for many years. EPA is planning to issue a regulation that updates NPDES permitting regulations to address changes in the program since it was initiated, clarify permitting requirements, and eliminate inconsistencies between regulations and application forms. The rule will likely cover topics in 4 major areas:

- permit application and documentation requirements,
- water-quality based permitting requirements and flexibilities,
- mechanisms for objecting to permits, and
- criminal enforcement penalties.

#### *Potential impacts to tribes*

EPA expects the NPDES updates rule will have minor effects on the interests of most tribes and operators of NPDES-permitted facilities on tribal land, and more significant effects on agencies that are delegated responsibility for issuing NPDES permits. The rule should streamline the permitting process by clarifying application procedures and providing standard application forms to obtain coverage under new NPDES permits such as the Pesticides General Permit. The rule may improve future communications concerning draft permits as it may authorize use of alternative public outreach and noticing mechanisms (other than local newspapers that are sometimes ineffective in reaching local communities) that better reach interested tribal parties. The rule should result in improved water quality by clarifying water-quality based permitting requirements such as antibacksliding. For some facilities, the rule may result in permitting decisions that incorporate more protective and potentially more costly discharge control requirements. If you have questions about this rule, you may e-mail Robyn Stuber, EPA Region 9 Environmental Scientist, at [stuber.robyn@epa.gov](mailto:stuber.robyn@epa.gov) or call (415) 972-3524.

#### **Tentative Timeline:**

Fall 2011 – proposal of NPDES updates rule and public comment period  
Summer 2012 – final issuance of NPDES Updates Rule

## **6. Sanitary Sewer Overflows Rule**

### *Background information*

EPA is considering whether to propose to modify the NPDES regulations as they apply to municipal sanitary sewer collection systems and sanitary sewer overflows (SSOs) in order to better protect the environment and public health from the harmful effects of sanitary sewer overflows and basement backups. The Agency is considering whether to propose possible modifications to the NPDES regulations, including establishing standard permit conditions for publicly owned treatment works (POTW) permits that specifically address sanitary sewer collection systems and SSOs, and clarifying the regulatory framework for applying NPDES permit conditions to municipal satellite collection systems (i.e., communities served by POTWs in neighboring communities). To assist EPA in deciding whether to proceed with SSO rulemaking, EPA has scheduled a national webcast on July 14 to discuss the potential rulemaking and invite public input concerning the potential rule. EPA will decide following this webcast whether and in what timeframe it will develop a SSO rule. More information about EPA's solicitation of input about a SSO rule and the webcast can be found at: [http://www.epa.gov/npdes/outreach\\_files/sso-webcast-07142010.pdf](http://www.epa.gov/npdes/outreach_files/sso-webcast-07142010.pdf).

### *Potential impacts to tribes*

If EPA establishes a rule to clarify regulation of SSOs, the rule may have minor effects on the interests of tribes and operators of NPDES-permitted wastewater collection and treatment facilities on or upstream from tribal land. The rule would likely strengthen controls intended to reduce the frequency and magnitude of SSOs and provide water quality benefits as a result. For some facilities, the rule may result in permitting decisions that incorporate more protective and potentially more costly SSO control requirements. If you have questions about this rule, you may e-mail Peter Kozelka, EPA Permitting Specialist, at [kozelka.peter@epa.gov](mailto:kozelka.peter@epa.gov), or call (415) 972-3448.

### **Tentative Timeline:**

July 14, 2011- EPA Webcast to discuss potential SSO rulemaking and invite public input

## **7. NPDES Sufficiently Sensitive Methods Rulemaking**

### *Background information*

The EPA is proposing minor amendments to its Clean Water Act (CWA) regulations to codify that under the NPDES program, only "sufficiently sensitive" analytical test methods can be used when completing an NPDES permit application and when performing sampling and analysis pursuant to monitoring requirements in an NPDES permit. Generally permittees use EPA-approved analytical methods to analyze chemical data they collect. Some of the approved analytical test methods have greater sensitivities and lower minimum levels or method detection limits (MDLs) than other approved methods for the same pollutant. This situation is often due to advances having been made in instrumentation and in the analytical protocols themselves.

EPA and state permitting authorities use data from the permit application to determine whether pollutants are present in an applicant's discharge and to quantify the levels of all detected pollutants. These pollutant data enable the permitting authority to make a sound reasonable potential determination and, if necessary, establish appropriate permit limits. It is critical, therefore, that applicants provide data that are measured with a precision and accuracy that will be meaningful to the decision making process. The same holds true for monitoring and reporting relative to permit limits established for regulated parameters.

The purpose of this proposal is to clarify that NPDES applicants and permittees must use analytical methods that are capable of detecting and measuring the pollutants at, or below, the respective water quality criteria or permit limits.

### *Potential impacts to tribes*

The sufficiently sensitive test methods rule will likely have minor effects on the interests of tribes and operators of NPDES-permitted facilities on or upstream from tribal land. The rule would improve the quality of chemical data

supporting NPDES permit applications and compliance evaluations. The rule should result in water quality improvements by improving the protectiveness of NPDES permits and capacity to accurately detect permit violations. For some facilities, the rule may result in increases in sample analysis costs as some more-sensitive test methods are more costly for analytical labs to conduct than some methods currently in common use. If you have questions about this rule, you may e-mail Peter Kozelka, EPA Permitting Specialist, at [kozelka.peter@epa.gov](mailto:kozelka.peter@epa.gov), or call (415)972-3448.

### **Tentative Timeline:**

June 23, 2010- EPA proposes Sufficiently Sensitive Methods rule and invites public comment  
August 9, 2010- Public Comment period closes on draft rule  
Summer 2011- EPA plans to issue the final rule

## **8. 401 Certification of Clean Water Act Nationwide Permit Program 2012 Renewal**

### *Background Information*

The U.S. Army Corps of Engineers (Corps) has proposed changes to certain Nationwide Permits (NWP) and national permit conditions as part of their 5-year program renewal before the current NWPs expire on March 18, 2012. Individual Corps districts have also proposed changes to their region-specific permit conditions. NWPs are administered by the Corps under the Clean Water Act (CWA) for certain activities with minimal impacts to waters of the U.S. When an activity requiring a federal permit or license is proposed, CWA Section 401 requires a government certification that the activities will protect water quality if there is the potential for discharges into streams, wetlands, or other waters of the U.S. This certification is performed by a state agency, territory or tribe that has Section 401 certifying authority. The federal government (EPA) must otherwise issue these certifications. Within EPA Region 9, there are nine tribes with certifying authority; therefore EPA will certify the NWP renewal for the remaining tribes.

### *Potential impacts to tribes*

EPA expects the NWP 401 certification may affect interests of some tribes because it will allow the Corps to proceed with renewing the NWP Program and proposed revisions that will govern the permitting of projects, including projects on tribal lands. Frequently projects proposed on tribal lands will involve a discharge of dredged or fill material directly into wetlands or streams- including seasonally dry arroyos or "washes"- and will require a NWP from the Corps. EPA has provided comments to the Corps on the proposed NWP renewal revisions, including recommendations for national and regional conditions, and will provide a summary of these recommendations to the tribes as part of our 401 certification process. If you have questions about this permit or the 401 Certification, you may e-mail Paul Amato at [amato.paul@epa.gov](mailto:amato.paul@epa.gov) or call (415) 972-3847.

### **Tentative Timeline:**

July, 2011 - send NWP 401 certification package to tribes for 60-day review,  
July 28, 2011 - provide additional information and discussion at the RTOC meeting in San Francisco,  
September, 2011 - close 60-day comment period for certification package,  
October/November, 2011 - complete comment follow up with tribal representatives,  
December, 2011 - Corps issues final NWPs,  
December, 2011/January, 2012 - EPA issues 401 certification,  
March 19, 2012 (no later than) - Reissued NWPs and conditions go into effect