



May 26, 2016

Water Docket
U.S. Environmental Protection Agency
Docket No. EPA-HQ-OW-2015-0828

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

The Water Environment Federation (WEF) thanks the U.S. Environmental Protection Agency (EPA) for the opportunity to comment on the Draft National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharges from Construction Activities.

WEF is a not-for-profit association that has provided technical education and training for the world's water quality professionals since 1928. The Federation has over 33,000 individual members and 75 affiliated Member Associations who support its mission to preserve and enhance the global water environment. WEF is supportive of regulations that are science based, achievable, and protective of human health and the environment.

Comments Summary

WEF offers the following comments for EPA's consideration:

- A group SWPPP is appealing, but there are concerns regarding how this might be practically implemented. Should EPA pursue this option, WEF offers a number of practical thoughts designed to help EPA address some of the complexities associated with group SWPPPs;
- WEF concurs with EPA's proposed language requiring authorized non-stormwater discharges (external washdown waters) not contain hazardous substances. When considering the matter holistically, it is far more effective to address toxic substances at the generating source versus in downstream receiving bodies;
- We generally concur with increasing the stabilization deadline, but have concerns that this might unduly penalize sites that are in full compliance with no track record of violations. We provide EPA recommendations on implementing a hybrid approach based upon site compliance history. This approach allows flexibility and incentive to the private sector;

- We offer additional best management practices to enhance those currently considered for reducing erosive flows generated by construction dewatering activities;
- WEF recommends the proposed 7-day inspection frequency be mandatory for sites with a history of compliance issues as those require the greatest amount of attention. Sites where there are documented histories of permit compliance should be recognized for their efforts by having a required 14-day inspection frequency and required after a > 0.25 inch rain event. Similar to the 2012 permit, sites discharging to sensitive waters should continue to inspect once every 7 days and after the greater than 0.25 inch rain event;
- WEF generally supports the concept of requiring a specified site inspection frequency for snowmelt runoff. However, we have concerns regarding the variability that surrounds the requirements proposed. We offer items for EPA to consider should the Agency decide to pursue this proposed requirement.
- WEF generally supports the concept of making the original SWPPP available to the public. However, we foresee it resulting in potential confusion if it is perceived the initial plan available represents current sites conditions and an updated SWPPP should it become necessary for changes to be made due to unknown site conditions, inadequate compliance, and other complicating factors. We offer a number of thoughts and considerations to help address this matter.

Specific Comments:

1. EPA requests comment on whether the permit should include a provision for sites with multiple operators requiring those operators to develop a group SWPPP, which would provide in one place documentation as to how the permit responsibilities will be divided among the permitted parties.

WEF believes that ultimate responsibility for construction related activities lies with the property owner and their legally designated agent (typically a general contractor). The idea of a group SWPPP is appealing, but there are concerns regarding how this might be practically implemented. Navigating a multi responsible party process could lead to confusion and present risks to multiple project operators and/or subcontractors who may have little to no influence on construction stormwater activities (i.e. masonry contractors, roofing contractors, etc.).

Should EPA pursue this option, WEF recommends the following:

The permit designate ultimate responsibility lies with the property owner and their designated legal agents. EPA, nor any other regulatory agency, should not be engaged in contractual issues between private entities. However, there should be a burden of proof provided to regulatory agencies that a formal relationship exists and a primary legally responsible party has been identified and designated. The SWPPP should contain a 1-2 page summary sheet for sub-contractors, assigning responsibilities for specific work. The general contractor (or other designated primary legally responsible

party) should be required to retain all on-site inspections they conduct documenting sub-contractor SWPPP compliance or non-compliance and corrective actions taken to address. EPA should develop appropriate provisions for compliance and enforcement actions in the event no such records are available during an on-site inspection. Additionally, there should be consideration for a “grandfathering” process - for only the multiple operator SWPPP provision - to allow projects that are either operating under the current 2012 construction stormwater general permit or are currently being reviewed under the current permit. This will prevent the necessity of property owners and contractors to have to renegotiate existing private contracts.

Particular care should be taken in applying this concept to developments with a single initial developer who does the grading, roads, and utilities, and then conveys the ownership of individual lots to multiple home builders. A procedure should be considered that ensures that all properties subject to the total planned development will be implemented and smaller lots with new owners are not later exempted should they fall under permit disturbance area thresholds.

2. Should the permit require that authorized non-stormwater discharges (external washdown waters) not contain hazardous substances?

EPA has proposed the following language in section 1.2.2.:

“External building washdown, provided soaps, solvents, and detergents are not used, and external surfaces do not contain hazardous substances (e.g., paint or caulk containing PCBs);” under section 1.2.2.

WEF concurs with EPA’s proposed language. Many construction stormwater sites either drain to waterbodies or into a community’s MS4 conveyance system. As EPA is aware, there are a number of impaired waters due to the presence of toxic chemicals and/or bioaccumulative persistent toxins found in fish tissue, which results in fish consumption advisories in order to protect the public health.

Several PCB total maximum daily loads (TMDLs) have been established in the U.S. (e.g. Delaware Estuary, the Upper Roanoke River, tidal Potomac River - http://www.mde.state.md.us/programs/Water/TMDL/ApprovedFinalTMDLs/Pages/Programs/WaterPrograms/TMDL/approvedfinaltmdl/tmdl_final_potomac_pcb.aspx, etc.).

Though these TMDLs contain waste load allocations for MS4 communities, it is widely known that MS4s are not the generators of these pollutants. Rather, MS4s receive contributions from adjacent contaminated sites (including washdown waters), industrial sites, pollution incidents (e.g. accidental discharge of transformer oils) and atmospheric deposition to the contributing watershed land surface. Many of these TMDLs rely on the use of “Pollutant Minimization Plans (PMPs)” to reduce the input of potential PCBs into MS4s, other conveyance systems, and waterbodies.

EPA’s proposed language allows potential hazardous substances to be addressed at the source versus downstream in a MS4 conveyance system. This provision is beneficial as it places emphasis on source control versus the current, and much more expensive, focus on addressing hazardous substances once they have entered dispersed

waterbodies and conveyance systems.

WEF recommends EPA implement this provision via visual inspections, rather than potentially require expensive water quality monitoring. It is unlikely that there will be enough concentrated flow volumes generated through such wash-down activities as it is.

EPA has proposed this provision be implemented for buildings predating 1980 and that are greater than 10,000 square feet. It is our assumption that anything after this date and/or less than 10,000 square feet is considered *de minimus* by EPA. In order to enforce this provision, documentation on building and size will need to be provided within the site specific SWPPP and construction plans. WEF recommends EPA develop a procedure for how this will be documented within the context of the permit

3. Should the permit modify the deadline to complete stabilization to seven (7) calendar days for all sites?

EPA requests comments on increasing stabilization completion requirements within 7-days for all sites (except for sites in arid, semi-arid, and drought-stricken areas and for permittees affected by circumstances beyond their control). The 2012 permit requires stabilization from 14 calendar days to 7 calendar days (with similar exceptions above), but requires sites discharging to sensitive waters (i.e., impaired waters and Tier 2, 2.5, or 3 waters) complete stabilization within a 7-day timeframe.

WEF points out that increasing the stabilization is a good concept, but we are concerned that it might unduly penalize sites that are in full compliance with no track record of violations.

WEF proposes EPA consider making the increased stabilization requirement mandatory for sites with a history of compliance issues as those require the greatest amount of attention. Sites where there is a documented history of permit compliance should be recognized for their efforts by having a 14 day stabilization window. Similar to the 2012 permit, sites discharging to sensitive waters should continue to complete stabilization within a 7-day timeframe.

WEF has concerns for sites that have particular challenges related to vegetation establishment. However, adequate inspections per those required by the permit should allow for reasonable adaptive management and corrective actions to take place. That being noted, consideration should be given to whether a mechanism should be developed to recognize these sites and allow them to meet the 14-day versus the 7-day window.

4. What additional dewatering controls or requirements should be considered for inclusion in the permit?

There is agreement that more practices available to practitioners is a benefit to water quality conditions. Considering this, the WEF suggests including the following items for consideration to reduce sediment delivery associated with dewatering systems:
Vegetated buffers with a minimum width of 25 feet located on moderate to low slopes

(<0.2%). Buffers should be widened pending increased slopes, the presence of highly erodible soils, and other on-site factors. At a minimum, buffers should be well established and have not subject to rill erosion, which would lead to a compromised best management practice.

Level spreaders and check dams should be employed downstream in order to prevent concentrated water from developing rills and channels.

Other water dispersion practices may be appropriate for use down stream of dewatering devices and facilities. WEF encourages EPA to explore the breadth of best management practices available in order to ensure erosive concentrated flows do not develop through such activities.

5. Should the permit include a modification of the site frequency requirement?

EPA requests comments on the appropriate site inspection frequency. Specifically, 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.

Similar to comment 3 above, WEF is generally supportive of increased site inspections at specific locations. Increased inspection frequencies meets the permit goals of protecting water quality. More frequent inspections will lead to the identification of issues such as lack of vegetation establishment and potential BMP maintenance and/or failure.

Also similar to comment 3, WEF has some concerns that increased site inspections would unduly penalize sites that are in full compliance of the permit and who have with no track record of violations.

WEF recommends the proposed 7-day inspection frequency be mandatory for sites with a history of compliance issues as those require the greatest amount of attention. Sites where there are documented histories of permit compliance should be recognized for their efforts by having a required 14-day inspection frequency and required after a > 0.25 inch rain event. Similar to the 2012 permit, sites discharging to sensitive waters should continue to inspect once every 7 days and after the greater than 0.25 inch rain event.

6. Should the permit include a requirement for a specified site inspection frequency for sites with snowmelt runoff?

WEF generally supports the concept of requiring a specified site inspection frequency for snowmelt runoff. However, we have concerns regarding the variability that surrounds the requirements proposed. Projects in cold-weather climates generally experience multiple freeze/thaw cycles; where freezing occurs at night, but thaws during the daytime. The runoff generated during these times may be problematic to address if placed in the same context as precipitation-driven runoff.

Minimum threshold and measurement/recording protocols are needed for snowmelt, similar to those for rainfall. Small snowmelt events occur with great frequency during

portions of the year when the days are above freezing and the nights below freezing. Without a minimum threshold, permittees could be unreasonably burdened with frequent unnecessary inspections. The inspection requirement should be triggered only by snowmelt events that are sufficient to generate damaging runoff and erosion. Permittees must be able to determine when those conditions are present at their sites. Without a minimum threshold and measurement/recording protocols for snowmelt, permittees will be left uncertain about compliance and regulators will face challenges in evaluation and enforcement.

In general terms, we suggest two possible approaches. The first would be to draft a minimum threshold and measurement/recording protocols for snowmelt that are similar to those for rainfall events. The second approach would be to define a general condition for a period of time of thawing conditions. This time would be weeks in length. During this time, if there is activity on the site, inspections would be required at a slightly higher frequency than normal.

After much discussion and consideration, we find ourselves unable to offer specific draft permit language as a suggested resolution for this issue. We urge EPA to consult with USGS. USGS has considerable experience with the relationship between weather conditions, snowmelt, and significantly increased streamflow. This relationship is similar to the conditions that would result in significant snowmelt generating damaging runoff and erosion.

As EPA addresses this issue, we urge the Agency to consider the following factors:

The existing definition of “thawing conditions” (Appendix A) is insufficient for the proposed purpose. It is very common, at certain times of the year, to have two consecutive days during which the temperatures exceed 32 degrees F for a short period of time and by a small number of degrees. The snowmelt resulting from these weather conditions would be insignificant and would not result in damaging runoff or erosion.

The rainfall threshold is intended to define storms that are expected to generate significant runoff and erosion. Similarly, the minimum threshold for snowmelt should differentiate between small snowmelt events and significant snowmelt events that can be expected to result in damaging runoff and erosion.

Significant snowmelt can only occur if there is a certain amount of snow on the site. Existing snow amounts can vary significantly in a highly localized manner. The measurement/recording protocols should provide a process for a permittee to measure and record that the existing snow amount on their site was such that snowmelt sufficient to generate damaging runoff and erosion was not possible, regardless of weather conditions.

The measurement/recording protocols should be simple and effective. They should not rely on historical climate or weather records, nor use complex snow/water content measurements.

If the approach based on a period of time of thawing conditions is used, it should be

defined in a manner that site operators can determine whether the condition applies to their site. Site operators and inspectors must be able to make such a determination based on their localized site conditions. Ideally, they should be able to make simple measurements and generate the appropriate records.

It should be noted that in cold climates, construction activity typically stops under freezing conditions. WEF strongly recommends that sites subject to this permit be temporarily stabilized to the maximum extent practical in order to prevent pollutant loadings from entering waterways and MS4 conveyance systems during snowmelt conditions.

7. Availability of Stormwater Pollution Prevention Plan (SWPPP)—Request for comment on requiring operators to make the SWPPP, or a portion of the SWPPP, publicly available. Part 7.3.

WEF understands EPA is requesting comment on the utility and feasibility of making the initial SWPPP publicly available under the CGP by requiring operators to either post it online on a website or submit it to EPA. EPA also requests comment on the specific components of the initial SWPPP that would be of greatest interest or utility to stakeholders, such as maintenance schedules, a description of construction activities, or expected pollutants. WEF also notes that the initial SWPPP was made available upon request in the previous CGP.

While WEF members support the position that the original SWPPP is made available upon written request, if the EPA chooses to make the initial SWPPP available to the public, WEF foresees that the broader availability of the initial SWPPP may have the potential to cause: 1) confusion that the initial plan represents the current version; or 2) demand for updates.

Since SWPPP's are living, working documents and may be revised depending on changing field and environmental conditions at the site, WEF asks the EPA to consider making only the initial SWPPP publically available. WEF believes the most current version of the SWPPP should reside with the responsible party or principle operator on site. High risk level projects or those that have been subject to substantial changes should be made publicly available given those changes would largely deviate from the initial SWPPP. This will avoid potential public confusion.

One concern is where to house the SWPPPs for public review. It is recommended that EPA develop or enhance an online database to house the SWPPPs. It is highly unlikely the public will know where to find such documents if it is not hosted by a central government entity. Localities will not have the individual capability to house the SWPPPs electronically. Such a decentralized approach will also create public confusion. As such, EPA is the best entity for facilitating such a tool.

We again thank you for this opportunity and welcome any dialogue or discussion on this matter. Should you have questions, you may contact me at (703) 684-2416 or at cternieden@wef.org, or Chris French, Director of Stormwater Programs, at (703) 684-2423 or cfrench@wef.org.

Sincerely,



Claudio H. Ternieden
Director of Government Affairs
Water Environment Federation