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RE: Draft National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharges from Construction Activities

The comments below are submitted by the New Mexico Department of Transportation (NMDOT) in response to the notice and request for public comment published in the Federal Register on April 11, 2016 (FR vol. 81, no. 69, page 21328).

**NMDOT Comment 1:** EPA Request for Comment 1 - EPA notes that it has included a request for comment in the proposed permit regarding projects with multiple operators 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.

The NMDOT suggests that EPA provide the option of developing a group SWPPP, rather than the requirement for a group SWPPP. Requiring that multiple operators agree on all of the components of a SWPPP can be a lengthy exercise, potentially requiring attorneys and approval by elected bodies. This amount of effort does not guarantee improved protection of water quality and may have the opposite effect as a group of operators find the “lowest common denominator” in complying with the CGP.

Additionally, any changes to the planned construction sequence or changes in circumstances at the construction site would require a corresponding change to the SWPPP. Deciding amongst a group of permitees how to address this change, or who should pay for this could add time and delay to a project.
**NMDOT Comment 2:** Permit Section 1.5 regarding the requirement to post EPA contact information on a sign at the site.

Section 1.5 of the proposed permit requires that a notice be posted that must include the following statement “If you observe indicators of stormwater pollutants in the discharge or in the receiving waterbody, contact the EPA Regional Office at [include the appropriate Regional Office].” NMDOT questions the value of asking citizens to report their observations to the EPA regional office, because the general public is not trained or knowledgeable about storm water discharges, what such discharges should look like, and what is included in the rules and SWPPP regarding what is allowable storm water discharges. It is not stated in the proposed permit or fact sheet how EPA intends to respond to such reports. If the reference to EPA were not on the sign, citizen observers are likely to call the City or County (the local MS4), who is the most available to respond and qualified to conduct an inspection. NMDOT suggests removing the requirement to post EPA contact information.

Should EPA choose to retain this wording in the Permit, NMDOT suggests that it would be more appropriate to provide contact information for the local State Environment Department, rather than the EPA. Even in New Mexico, where EPA has primacy, the New Mexico Environment Department is the agency that would investigate possible Permit violations.

**NMDOT Comment 3:** Permit Section 2.1.2, regarding the requirement to design and install all stormwater controls in accordance with good engineering practices, including applicable design specifications.

“Good engineering practices”, particularly in design and specifications, should require certification by a registered professional engineer.

**NMDOT Comment 4:** Factsheet, Section 2.2.10, last paragraph, page 50 of 106, regarding installation of inlet protection measures to any storm drain inlet that carries stormwater flow from the site to a water of the U.S.

NMDOT disagrees with this proposal. The NMDOT had a large interstate interchange project in Albuquerque. The storm water from the site drained to a storm water channel managed by the local flood control authority. The contractor approached the flood control authority about building a large storm water quality feature in the channel. Compared to the estimated cost of storm water controls throughout the large construction site, there were significant cost savings using a single, centralized feature, not only in construction costs, but in inspection and maintenance. Further, the in-channel water quality structure continues to work even after construction was completed, so there was both a short-term and long-term benefit to water quality. NMDOT suggests that this rule should have the flexibility to manage storm water flow and quality on either the smaller scale (inlet-by-inlet) or on a larger scale. The metric should be water quality, not the number of inlets.
**NMDOT Comment 5:** Request for Comment 3 - EPA notes that it has included a request for comment in the proposed permit on whether to modify 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) in order to ensure discharges meet water quality standards. Under the current 2012 CGP, sites discharging to sensitive waters (i.e., impaired waters and Tier 2, 2.5, or 3 waters) will be required to complete stabilization within a 7-day timeframe. EPA requests comment on completing stabilization 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).

NMDOT supports the exception for the requirements for stabilizing sites in arid, semi-arid, and drought-stricken areas.

**NMDOT Comment 6:** Request for Comment 5 - EPA solicits comment on the appropriate inspection frequency. In particular, EPA solicits comment in the proposed permit 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. Under the current 2012 CGP, this inspection frequency applies to sites discharging to sensitive waters (i.e., impaired waters and Tier 2, 2.5, or 3 waters). EPA requests comment on the feasibility of the appropriate inspection frequency for all sites (except for sites qualifying for a reduction in inspection frequency in Part 4.4 below). Please identify specifically the situations where this frequency would not be reasonable. EPA also requests comment on requiring the inspection frequency to be once every seven days (without the option of inspection once every 14 calendar days and within 24 hours of a storm event).

The NMDOT strongly supports Section 4.4.2 of the proposed permit allowing monthly inspections and after a qualifying storm event. There is little to no benefit of weekly or bi-weekly inspections of construction sites if there has been no precipitation.

**NMDOT Comment 7:** Request for Comment 6 - EPA notes that it has included a request for comment in the proposed permit on the frequency of inspections that should be required for snowmelt runoff. Where snowmelt discharges occur over multiple days, as many frequently do, EPA is interested in receiving feedback on a recommended inspection frequency for these discharge events.

NMDOT suggests EPA not add an inspection requirement due to snowmelt. While the concept may have merit, it will be difficult to implement. How does one measure the qualifying discharge? Flow at how many locations along the construction site must be measured to qualify? For NMDOT, our active construction site may be relatively narrow, but a mile long. Is this peak flow rate or based on volume? A snowmelt discharge is difficult to quantify, and therefore will be difficult to enforce, or for contractors to know when to inspect.
**NMDOT Comment 8:** Section 5.1.1 regarding the condition of a storm water control requiring repair or replacement as triggering a corrective action.

Corrective actions are considered permit violations, require a corrective action report within 24 hours, and must be signed by the certifying official. Corrective actions are distinguished from routine maintenance in the Fact sheet (Section 5.1, page 75 of 106). NMDOT suggests that repair and replacement are part of routine maintenance and should not be considered as triggering corrective actions or permit violations. Because maintaining storm water controls as described in the SWPPP is already required, elevating repairs and replacement to permit violations will serve to create unnecessary paperwork burdens without increasing water quality. Additionally, this requirement may have a negative effect instead of beneficial one. If a contractor must file a Corrective Action Report every time they make repairs to or replace a stormwater control, they will put off repairs until they are absolutely necessary, or they are forced to. Allowing these repairs to occur without filing a report will make it easier for contractors to make more frequent repairs to partially damaged stormwater controls, and therefore more likely to occur.

**NMDOT Comment 9:** Request for Comment 7 - On whether EPA should require the initial SWPPP to be made publicly available by requiring operators to either post it online on a website or submit it to EPA. Enhanced transparency and availability of CGP SWPPP information will provide stakeholders with more timely and complete information about potential sources of water pollution and measures to control discharges for the sites covered under the CGP, and will help EPA to ensure that SWPPPs are meaningfully developed and implemented.

NMDOT does not support submitting the SWPPP to EPA. If SWPPPs were submitted to EPA, then EPA would have the responsibility to review and approve the SWPPPs. If not reviewed by EPA, consider the scenario of EPA providing a SWPPP to a citizen without EPA knowing what is in the SWPPP or if it complies with the requirements of the CGP. It is unclear that EPA has the resources to review and approve every CGP SWPPP within 14 days of the NOI. Additionally, does EPA have the hard-drive space and web resources to accommodate the large number of SWPPP documents that it would receive?

NMDOT’s internal policies and capabilities prohibit it from posting a Contractor’s SWPPP on the NMDOT website. If it were to be posted on the Contractor’s website, it is highly unlikely any concerned citizen would know how to find it, or that they needed to look there for it.

Posting the SWPPP at the construction site is sufficient and makes it available to the public at the location of concern. This also allows the Contractor to more easily make updates to the SWPPP.

Sincerely,

Steven Morgenstern
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