

ballast water, and on deck drainage discharges. Discharges of seawater and freshwater which have been used to pressure test existing pipelines and piping, to which treatment chemicals have been added, are proposed to be subject to limitations on free oil, concentration of treatment chemicals, and acute toxicity. New facilities withdrawing cooling water greater than 2 million gallons per day (MGD) are required to have the best technology available for minimizing fish/shellfish impingement mortality and entrainment caused by cooling water intake structures. Pursuant to the electronic reporting rule published in the **Federal Register** (80 FR 64063), a new electronic reporting requirement is added to the proposed permit.

Other Legal Requirements

State certification under section 401 of the CWA; consistency with the Texas Coastal Management Program; and compliance with National Environmental Policy Act, Endangered Species Act, Magnuson-Stevens Fishery Conservation and Management Act, Historic Preservation Act, Paperwork Reduction Act, and Regulatory Flexibility Act requirements are discussed in the fact sheet to the proposed permit.

Dated: December 28, 2016.

William K. Honker,

Director, Water Division, EPA Region 6.

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ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OW-2015-0828; FRL-9958-68-OW]

Final National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharges From Construction Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final permit issuance.

SUMMARY: All ten EPA Regions today are issuing the 2017 National Pollutant Discharge Elimination System (NPDES) general permit for stormwater discharges from construction activities to waters of the United States, also referred to as the “2017 Construction General Permit (CGP).” The 2017 CGP replaces the existing general permit (the “2012 CGP”) covering stormwater discharges from construction activities that expires on February 16, 2017. EPA is issuing this permit for five (5) years, during which time the permit will make available coverage to eligible operators in all areas of the country where EPA is the NPDES permitting authority. This **Federal Register** notice describes the 2017 CGP in general and provides a summary of the significant changes from the 2012 CGP.

DATES: The 2017 CGP will become effective on February 16, 2017. This effective date will provide dischargers with the immediate opportunity to comply with Clean Water Act requirements in light of the expiration of the 2012 CGP at midnight on February 16, 2017. In accordance with 40 CFR part 23, specifically 23.2, this permit shall be considered issued for the purpose of judicial review on January 25, 2017. Under section 509(b) of the Clean Water Act, judicial review of this general permit can be requested by filing a petition for review in the United States Court of Appeals within 120 days after the permit is considered issued. Under section 509(b)(2) of the Clean Water Act, this permit may not be challenged later in civil or criminal proceedings to enforce this permit. In addition, this permit may not be challenged in any other agency proceedings. Deadlines for submittal of notices of intent are provided in Part 1.4.3 of the permit. The permit also provides additional dates for compliance with the terms of the permit.

FOR FURTHER INFORMATION CONTACT: For further information on the permit, contact the appropriate EPA Regional office listed in Section I.C of this notice, or Emily Halter, EPA Headquarters, Office of Water, Office of Wastewater Management at tel.: 202-564-3324 or email: *halter.emily@epa.gov*.

SUPPLEMENTARY INFORMATION: This section is organized as follows:

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I. General Information

A. *Does this action apply to me?*

1. Entities Covered by This Permit

This permit covers the following entities, as categorized in the North American Industry Classification System (NAICS):

TABLE 1—ENTITIES COVERED BY THIS PERMIT

Category	Examples of affected entities	North American Industry Classification System (NAICS) code
Industry	Construction site operators disturbing one (1) or more acres of land, or less than one (1) acre but part of a larger common plan of development or sale if the larger common plan will ultimately disturb one (1) acre or more, and performing the following activities:	
	Construction of Buildings	236
	Heavy and Civil Engineering Construction	237

EPA does not intend the preceding table to be exhaustive, but provides it as a guide for readers regarding the types of activities that EPA is now aware of that could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your site is covered by this action, you should carefully examine the definition of “construction activity” and “small construction activity” in existing EPA regulations at 40 CFR 122.26(b)(14)(x) and 122.26(b)(15), respectively. If you have questions regarding the applicability of this action to a particular entity, consult one of the persons listed for technical information in the preceding **FOR FURTHER INFORMATION CONTACT** section.

2. Construction Projects for Which Operators Are Eligible for Permit Coverage

Coverage under this permit is available to operators of eligible projects located in those areas where EPA is the permitting authority. A list of eligible areas is included in Appendix B of the permit. Eligibility for permit coverage is limited to operators of “new sites,” operators of “existing sites,” “new operators of permitted sites,” and operators of “emergency-related projects.” A “new site” is a site where construction activities commenced on or after February 16, 2017. An “existing site” is a site where construction activities commenced prior to February 16, 2017. A “new operator of a permitted site” is an operator that through transfer of ownership and/or operation replaces the operator of an already permitted construction site that is either a “new site” or an “existing site.” An “emergency-related project” is a project initiated in response to a public emergency (*e.g.*, *mud slides, earthquake, extreme flooding conditions, disruption in essential public services*), for which the related work requires immediate authorization to avoid imminent endangerment to human health or the environment, or to reestablish public services.

3. Geographic Coverage

This permit makes coverage available to eligible operators for stormwater discharges from construction activities that occur in areas not covered by an approved state NPDES program. The areas of geographic coverage of this permit are listed in Appendix B, and include the states of New Hampshire, Massachusetts, New Mexico, and Idaho as well as most Indian country lands, and areas in selected states operated by a federal operator. Permit coverage is also available to eligible operators in

Puerto Rico, the District of Columbia, and the Pacific Island territories, among others.

B. How can I get copies of these documents and other related information?

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. EPA-HQ-OW-2015-0828. The official public docket is the collection of materials that is available for public viewing at the Water Docket in the EPA Docket Center, (EPA/DC) WJC West Building, Room 3334, 1301 Constitution Ave. NW., Washington, DC 20460. Although all documents in the docket are listed in an index, some information is not publicly available, *i.e.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Publicly available docket materials are available in hard copy at the EPA Docket Center Public Reading Room, open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744 and the telephone number for the Water Docket is (202) 566-2426.

2. *Electronic Access.* You may access this **Federal Register** notice electronically through the United States government on-line source for Federal regulations at <http://www.regulations.gov>.

Electronic versions of this permit and fact sheet are available on EPA’s NPDES Web site at <https://www.epa.gov/npdes/stormwater-discharges-construction-activities>.

An electronic version of the public docket is available through the EPA’s electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.regulations.gov> to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. For additional information about EPA’s public docket, visit the EPA Docket Center homepage at <https://www.epa.gov/dockets>. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the Docket Facility identified in Section I.B.1.

C. Who are the EPA regional contacts for this permit?

For EPA Region 1, contact Suzanne Warner at tel.: (617) 918-1383 or email at warner.suzanne@epa.gov.

For EPA Region 2, contact Stephen Venezia at tel.: (212) 637-3856 or email at venezia.stephen@epa.gov, or for

Puerto Rico, contact Sergio Bosques at tel.: (787) 977-5838 or email at bosques.sergio@epa.gov.

For EPA Region 3, contact Carissa Moncavage at tel.: (215) 814-5798 or email at moncavage.carissa@epa.gov.

For EPA Region 4, contact Michael Mitchell at tel.: (404) 562-9303 or email at mitchell.michael@epa.gov.

For EPA Region 5, contact Brian Bell at tel.: (312) 886-0981 or email at bell.brianc@epa.gov.

For EPA Region 6, contact Suzanna Perea at tel.: (214) 665-7217 or email at perea.suzanna@epa.gov.

For EPA Region 7, contact Mark Matthews at tel.: (913) 551-7635 or email at matthews.mark@epa.gov.

For EPA Region 8, contact Amy Clark at tel.: (303) 312-7014 or email at clark.amy@epa.gov.

For EPA Region 9, contact Eugene Bromley at tel.: (415) 972-3510 or email at bromley.eugene@epa.gov.

For EPA Region 10, contact Margaret McCauley at tel.: (206) 553-1772 or email at mccauley.margaret@epa.gov.

II. Background of Permit

The Clean Water Act (“CWA”) establishes a comprehensive program “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” 33 U.S.C. 1251(a). The CWA also includes the objective of attaining “water quality which provides for the protection and propagation of fish, shellfish and wildlife and * * * recreation in and on the water.” 33 U.S.C. 1251(a)(2). To achieve these goals, the CWA requires EPA to control discharges of pollutants from point sources through the issuance of NPDES permits.

The Water Quality Act of 1987 (WQA) added section 402(p) to the CWA, which directed EPA to develop a phased approach to regulate stormwater discharges under the NPDES program. 33 U.S.C. 1342(p). EPA published a final regulation in the **Federal Register**, often called the “Phase I Rule,” on November 16, 1990, establishing permit application requirements for, among other things, “storm water discharges associated with industrial activity.” See 55 FR 47990. EPA defines the term “storm water discharge associated with industrial activity” in a comprehensive manner to cover a wide variety of facilities. See *id.* Construction activities, including activities that are part of a larger common plan of development or sale, that ultimately disturb at least five acres of land and have point source discharges to waters of the U.S. were included in the definition of “industrial activity” pursuant to 40 CFR 122.26(b)(14)(x). The second rule

implementing section 402(p), often called the "Phase II Rule," was published in the **Federal Register** on December 8, 1999. It requires NPDES permits for discharges from construction sites disturbing at least one acre but less than five acres, including sites that are part of a larger common plan of development or sale that will ultimately disturb at least one acre but less than five acres, pursuant to 40 CFR 122.26(b)(15)(i). See 64 FR 68722. EPA is issuing this permit under the statutory and regulatory authority cited above.

NPDES permits for construction stormwater discharges are required under Section 402(a)(1) of the CWA to include conditions to meet technology-based effluent limits established under Section 301 and, where applicable, Section 306. Effluent Limitations Guidelines (ELGs) and New Source Performance Standards (NSPS) are technology-based effluent limitations that are based on the degree of control that can be achieved using various levels of pollutant control technology as defined in Subchapter III of the CWA.

Once a new national standard is established in accordance with these sections, NPDES permits must incorporate limits based on such technology-based standards. See CWA sections 301 and 306, 33 U.S.C. 1311 and 1316, and 40 CFR 122.44(a)(1). On December 1, 2009, EPA published final regulations establishing technology-based ELGs and NSPSs for the Construction & Development (C&D) point source category, which became effective on February 1, 2010. See 40 CFR part 450, and 74 FR 62996 (December 1, 2009). The Construction & Development Rule, or "C&D rule," was amended on March 6, 2014 to satisfy EPA's agreements pursuant to a settlement of litigation that challenged the 2009 rule. See 79 FR 12661. All NPDES construction stormwater NPDES permits issued by EPA or states after this date must incorporate the requirements in the C&D rule.

III. Summary of the Final 2017 CGP

The final 2017 CGP is substantially similar to the 2012 CGP. It includes effluent limitations (*i.e.*, requirements for erosion and sediment and pollutant prevention controls) and requirements for self-inspections, corrective actions, staff training, development of a stormwater pollution prevention plan (SWPPP), and permit conditions applicable to construction sites in specific states, Indian country lands, and territories. Additionally, the appendices provide forms for the submittal of a Notice of Intent (NOI),

Notice of Termination (NOT), Low Erosivity Waiver (LEW), as well as step-by-step procedures for determining eligibility with respect to the protection of threatened and endangered species and historic properties, and for complying with the permit's natural buffer requirements.

A. Technology-Based Effluent Limits

As stated above, all NPDES construction permits issued by EPA or states after March 6, 2014 must incorporate the requirements in the C&D rule, as amended. The non-numeric effluent limitations in the C&D rule are designed to prevent the mobilization and discharge of sediment and sediment-bound pollutants, such as metals and nutrients, and to prevent or minimize exposure of stormwater to construction materials, debris, and other sources of pollutants on construction sites. In addition, these non-numeric effluent limitations reduce the generation of dissolved pollutants. Soil on construction sites can contain a variety of pollutants such as nutrients, pesticides, herbicides, and metals. These pollutants may be present naturally in the soil, such as arsenic or selenium, or they may have been contributed by previous activities on the site, such as agriculture or industrial activities. These pollutants, once mobilized by stormwater, can detach from the soil particles and become dissolved pollutants. Once dissolved, these pollutants would not be removed by down-slope sediment controls. Source control through minimization of soil erosion is therefore the most effective way of controlling the discharge of these pollutants.

The non-numeric effluent limits in the C&D rule, upon which the technology-based requirements in the permit are based, include the following:

- **Erosion and Sediment Controls**—Permittees are required to design, install and maintain effective erosion controls and sediment controls to minimize the discharge of pollutants. At a minimum, such controls must be designed, installed and maintained to:

1. Control stormwater volume and velocity to minimize soil erosion in order to minimize pollutant discharges;
2. Control stormwater discharges, including both peak flowrates and total stormwater volume, to minimize channel and streambank erosion and scour in the immediate vicinity of discharge points;
3. Minimize the amount of soil exposed during construction activity;
4. Minimize the disturbance of steep slopes;

5. Minimize sediment discharges from the site. The design, installation and maintenance of erosion and sediment controls must address factors such as the amount, frequency, intensity and duration of precipitation, the nature of resulting stormwater discharge, and soil characteristics, including the range of soil particle sizes expected to be present on the site;

6. Provide and maintain natural buffers around waters of the United States, direct stormwater to vegetated areas and maximize stormwater infiltration to reduce pollutant discharges, unless infeasible;

7. Minimize soil compaction. Minimizing soil compaction is not required where the intended function of a specific area of the site dictates that it be compacted; and

8. Unless infeasible, preserve topsoil. Preserving topsoil is not required where the intended function of a specific area of the site dictates that the topsoil be disturbed or removed.

- **Soil Stabilization Requirements**—Permittees are required to, at a minimum, initiate soil stabilization measures immediately whenever any clearing, grading, excavating or other earth disturbing activities have permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 calendar days. In arid, semiarid, and drought-stricken areas where initiating vegetative stabilization measures immediately is infeasible, alternative stabilization measures must be employed as specified by the permitting authority. Stabilization must be completed within a period of time determined by the permitting authority. In limited circumstances, stabilization may not be required if the intended function of a specific area of the site necessitates that it remain disturbed.

- **Dewatering Requirements**—Permittees are required to minimize the discharge of pollutants from dewatering trenches and excavations. Discharges are prohibited unless managed by appropriate controls.

- **Pollution Prevention Measures**—Permittees are required to design, install, implement, and maintain effective pollution prevention measures to minimize the discharge of pollutants. At a minimum, such measures must be designed, installed, implemented and maintained to:

1. Minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters. Wash waters must be treated in a sediment basin or alternative control that provides

equivalent or better treatment prior to discharge;

2. Minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste and other materials present on the site to precipitation and to stormwater. Minimization of exposure is not required in cases where the exposure to precipitation and to stormwater will not result in a discharge of pollutants, or where exposure of a specific material or product poses little risk of stormwater contamination (such as final products and materials intended for outdoor use); and

3. Minimize the discharge of pollutants from spills and leaks and implement chemical spill and leak prevention and response procedures.

• *Prohibited Discharges*—The following discharges from C&D sites are prohibited:

1. Wastewater from washout of concrete, unless managed by an appropriate control;

2. Wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds and other construction materials;

3. Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance; and

4. Soaps or solvents used in vehicle and equipment washing.

• *Surface Outlets*—When discharging from basins and impoundments, permittees are required to utilize outlet structures that withdraw water from the surface, unless infeasible.

The fact sheet details how EPA has incorporated these requirements into the final 2017 CGP. The discussion in the fact sheet includes a summary of each provision and the agency's rationale for articulating the provision in this way.

B. Water Quality-Based Effluent Limits (WQBELs)

EPA's regulations at 40 CFR 122.44(d)(1) require permitting authorities to include additional or more stringent permit requirements when necessary to achieve water quality standards. The 2012 CGP contained several provisions to protect water quality and the 2017 CGP includes those same provisions. The permit includes a narrative WQBEL requiring that discharges be controlled as necessary to meet applicable water quality standards. Failure to control discharges in a manner that meets applicable water quality standards is a violation of the permit.

In addition to the narrative WQBEL, the permit contains related provisions that act together to further protect water quality. Many of these provisions were also included in the 2012 CGP. For example, the permit requires operators to implement stormwater control measures and to take corrective action in response to any exceedance of applicable water quality standards. To provide further protection, the permit also requires more stringent site inspection frequencies and stabilization deadlines for construction sites that discharge to sensitive waters, such as those waters that are impaired for sediment or nutrients, which are parameters typically associated with stormwater discharges from construction sites, or waters identified by a state, tribe, or EPA as requiring enhanced protection under antidegradation requirements. Additionally, EPA received CWA Section 401 certifications for the 2017 CGP. Some of these certifications include additional water quality-based conditions that are required by states, Indian country lands, and territories, that become legally binding permit limits and conditions in specific geographic areas where the permit is available.

A new water quality protection established in the 2017 CGP is a modified approach to site stabilization deadlines based on the concept of phasing construction disturbances, where sites that disturb more than five (5) acres total over the course of a construction project are required to stabilize within a more stringent timeframe if they do not limit disturbances to five (5) acres or less at any one time. This modified approach is summarized below and is discussed in more detail in the fact sheet.

C. Summary of Significant Permit Changes From the 2012 CGP

The 2017 CGP includes several new or modified requirements, which are summarized below and discussed in more detail in the fact sheet. The final 2017 CGP and the fact sheet can be found at <https://www.epa.gov/npdes/stormwater-discharges-construction-activities>.

1. *Streamlining of the permit*—EPA streamlined and simplified language throughout the 2017 CGP to present requirements in a generally more clear and readable manner. This structure should enhance the operators' understanding of and compliance with the permit's requirements. For example, EPA moved language that was not necessary in the permit into the relevant appendix or to the fact sheet. Although

the permit has been streamlined from prior permits, most of the requirements remain unchanged.

2. *Revisions consistent with the C&D ELG, as amended*—EPA made minor revisions to the technology-based effluent limits in the permit to incorporate the March 6, 2014 amendments to the Construction and Development Effluent Guidelines and Standards (the "C&D rule") at 40 CFR part 450 (see section III.A. of this notice on Technology-Based Effluent Limits). The 2012 CGP already incorporated the original C&D rule requirements and the 2017 CGP includes the necessary revisions to the language based on the rule amendments but does not add any new requirements. These revisions include clarifying the applicability of requirements to control erosion caused by discharges, providing additional details on areas where buffers are required, and clarifying requirements for soil stabilization, preservation of topsoil and pollution prevention measures.

3. *Authorized non-stormwater discharges*—Non-stormwater discharges of external building washdown waters containing hazardous substances, such as paint or caulk containing polychlorinated biphenyl (PCBs) are not authorized in the 2017 CGP. Non-stormwater discharges are required to comply with any applicable effluent limitation requirements in Parts 2 and 3 of the permit. Part 1.2.2.

4. *Notice of permit coverage*—Consistent with the 2012 CGP, operators must post a sign or other notice of permit coverage at a safe, publicly accessible location in close proximity to the construction site. In the 2017 CGP, this notice must also include information informing the public on how to contact EPA to obtain a copy of the SWPPP and how to contact EPA if stormwater pollution is observed in the discharge. EPA is requiring these additions to make the longstanding process of obtaining a SWPPP more readily known to the public and to improve transparency of the process to report possible violations. Part 1.5.

5. *Stockpiles and land clearing debris piles*—EPA changed the requirement for temporary stabilization for stockpiles or land clearing debris piles from "where practicable" to requiring cover or appropriate temporary stabilization for all inactive piles that will be unused for 14 or more days, consistent with the temporary stabilization deadlines in Part 2.2.14 of the 2017 CGP. EPA made this change to ensure pollutants are minimized from these piles, but is clarifying that the requirement only

applies where these piles are not actively being used. Part 2.2.5.

6. *Stabilization deadlines*—The 2017 CGP establishes a modified approach to the stabilization deadlines, which is based on the concept of phasing construction disturbances. Sites that disturb five (5) acres or less must complete stabilization within a 14-calendar day timeframe, which is the same timeframe that applied to sites in the 2012 CGP. For sites that disturb more than five (5) acres over the course of a construction project, operators can choose between completing stabilization within a 14-calendar day timeframe if they limit disturbances to five (5) acres or less at any one time, or within a 7-calendar day timeframe if they do not limit disturbances to five (5) acres or less at any one time. The intent of this approach is to provide an incentive to disturb less land at any given period of time by providing longer stabilization timeframes if the disturbance is kept below a threshold level. The deadline for sites discharging to sensitive waters remains unchanged (within 7 calendar days), and the exceptions for sites in arid, semi-arid, and drought-stricken areas and for operators affected by circumstances beyond their control also remain unchanged. Part 2.2.14.

7. *Construction and domestic waste*—The 2017 CGP requires operators to keep waste container lids closed when not in use and at the end of the business day for those containers that are actively used throughout the day, or, for waste containers that do not have lids, to provide cover or a similarly effective means to minimize the discharge of pollutants. EPA made this change to minimize the exposure of these waste materials to precipitation and stormwater, and to make the requirements for construction and domestic waste consistent with the cover requirements for most other types of materials and wastes in the CGP. Part 2.3.3.

8. *Discharge limitations for sites discharging to sensitive waters*—In order to ensure that discharges meet water quality standards, EPA added a requirement in the 2017 CGP to implement controls on sites discharging to polychlorinated biphenyl (PCB) impaired waters to minimize the exposure of building materials containing PCBs to precipitation and stormwater. This provision applies to the demolition of structures with at least 10,000 square feet of floor space built or renovated before January 1, 1980. EPA also added a requirement to document information about the demolition location and associated pollutants in the SWPPP. Part 3.2.

9. *Notice of Intent (NOI)*—In the 2017 CGP, EPA added three questions to the NOI form (Appendix J). These questions are:

- The type of construction site (select one or more of 9 options);
- A yes/no question asking if there is demolition of a structure with at least 10,000 square feet of floor space that was built or renovated before January 1, 1980; and
- A yes/no question asking whether the predevelopment land use was used for agriculture.

IV. Implementation Assistance

Following issuance of the 2017 CGP, EPA plans to provide further assistance to construction operators, state permitting authorities, and other interested parties on various aspects of this new permit. The following activities or documents are planned:

- *National Webcast*—EPA will host a webcast in February of 2017 that will provide an overview of the 2017 CGP and an opportunity for participants to ask questions. EPA anticipates offering more webcasts covering the same material or more specific aspects of the permit. The agency will announce details of all webcasts on the CGP Web site at <https://www.epa.gov/npdes/stormwater-discharges-construction-activities>.

- *Small Residential Lot SWPPP Template*—EPA will also be providing an updated template that small residential lot builders can use to develop a streamlined SWPPP that is consistent with the minimum requirements of the permit.

- *Inspection and Corrective Action Report Templates*—EPA will also be providing updated template forms that construction site operators can use to document inspections completed pursuant to the permit's requirements in Part 4 and in preparing corrective action reports pursuant to the permit's requirements in Part 5.

EPA will consider additional outreach to support the 2017 CGP based on the level of interest and demand.

V. Analysis of Economic Impacts

EPA expects the economic impact on entities that will likely seek coverage under this permit, including small businesses, to be minimal. A copy of EPA's economic analysis, titled "Cost Impact Analysis for the 2017 Construction General Permit (CGP)," is available in the docket for this permit. The economic impact analysis indicates that while there may be some incremental increase in the costs of complying with the 2017 CGP over the 2012 CGP, these costs will not have a

significant economic impact on a substantial number of small entities.

This analysis evaluates the cost implications of the key changes to the permit. Each change is examined in light of the 2012 CGP's requirements, where applicable. The objective of this examination is to show where or to what extent the 2017 CGP includes requirements that impose an incremental increase in costs on operators above and beyond costs that are already accounted for in the 2012 CGP, which incorporated the C&D rule and defines the baseline of costs to which operators are currently subject.

The C&D rule baseline costs estimate the cost of compliance for all construction activities required to obtain NPDES permit coverage to implement the stormwater controls required by the Effluent Limitations Guideline. While the C&D rule applies to permitted construction activities under the NPDES program nationwide, the 2017 CGP provides coverage to a sub-set of those activities in areas not covered by an approved state NPDES program, which accounts for approximately 5–6 percent of the construction stormwater permitted universe under the NPDES program.

Calculating the total cost of EPA's construction stormwater program under the 2017 CGP is challenging for several reasons. NPDES general permits, such as the CGP, are issued to no one operator in particular, with multiple operators obtaining coverage under the general permit after it is issued. Therefore, the 2017 CGP has an inherently unknown permitted universe at the time of permit issuance. EPA can estimate that approximately 25,000 operators will seek coverage under the 2017 CGP during its five-year life span, based on data from previous CGPs.

However, the total cost calculation is dependent on many other factors and assumptions that are difficult to estimate or extrapolate for the entire CGP permitted universe. Although many operators under the CGP share similar operations and discharge properties, the variables that would need to be accounted for in estimating the total cost of compliance vary widely across individual construction sites, for example, total area and duration that land is disturbed, slope, climate and precipitation patterns, soil type, topography, and previous land use. In addition, factors such as labor and material costs vary across the country. Given that EPA does not know and does not collect data on all of the specific operator characteristics necessary to make an accurate estimate, EPA is not able to estimate the total cost of

compliance with EPA's CGP at this time. EPA's practice instead is to calculate the incremental change in burden with each permit reissuance and, where applicable, provide estimates of some known costs that can be used to calculate the estimated total cost of a specific permit change.

Part 3.2 has a new requirement in the 2017 CGP for operators discharging to waters impaired for PCBs. Buildings and structures originating or remodeled between the years of 1950–1979 often contain PCBs in materials such as caulk and paint. Without proper controls, the demolition of such structures can cause PCBs to be released into the environment and discharged into waters of the U.S. during storm events. To address this concern, EPA has added a new provision that requires controls to be implemented to minimize exposure of PCB-containing building materials to precipitation and stormwater, and to ensure that such materials are disposed in compliance with applicable state, federal, and local laws. The requirement is limited to the demolition of buildings or structures with at least 10,000 square feet of floor space built or renovated before January 1, 1980 on sites that discharge to waters with known impairments for PCBs.

Over 4,500 water bodies are currently listed in the PCB-polluted category, making this the sixth-highest water pollution cause nationwide. This includes 81,610 miles of rivers and streams, 3,204,534 acres of lakes and ponds, and 400,094 square miles of bays and estuaries that are impaired for PCBs. EPA does not currently have data on the number of construction projects subject to EPA's CGP that involve demolition of a structure with at least 10,000 square feet of floor space built or renovated before January 1, 1980 on sites that discharge to waters impaired for PCBs. Therefore, at this time, EPA does not have an estimate for the number of operators that will be affected by this new requirement. However, EPA added a new question on the NOI form asking about the prevalence of demolition of a structure with at least 10,000 square feet of floor space that was built or renovated before January 1, 1980. When reissuing this permit, EPA will review the data submitted on the NOI forms as well as information on the implementation of this requirement, as necessary, to determine whether to revise the applicability of the requirement or associated cost impact analysis.

VI. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a “significant regulatory action.” Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011) and any changes made in response to OMB recommendations have been documented in the docket for this action.

VII. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that the 2017 CGP will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because the requirements in the permit apply equally to all construction projects that disturb one or more acres in areas where EPA is the permitting authority, and the erosion and sediment control provisions increase the level of environmental protection for all affected populations.

VIII. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

In compliance with Executive Order 13175, EPA consulted with tribal officials to gain an understanding of and, where necessary, address the tribal implications of the permit. In the course of this consultation, EPA conducted the following activities:

- August 5, 2015—EPA mailed notification letters to all Tribal leaders, initiating consultation and coordination on the draft 2017 CGP. The consultation period was from August 17, 2015 to October 13, 2015.

- August 11, 2015—EPA presented a brief overview of the 2012 CGP and information regarding the upcoming consultation to the National Tribal Caucus.

- August 12, 2015—EPA presented a brief overview of the 2012 CGP and information regarding the upcoming consultation to the National Tribal Water Council.

- September 22, 2015—EPA held a consultation teleconference call; 18 Tribes were represented. EPA responded to the general questions raised on the call.

- On October 14, 2015, EPA received one set of comments from a Tribe in the State of Washington. EPA evaluated and considered the comments during the finalization of the 2017 CGP; EPA responded to the formal comments submitted in writing during the comment period in the Agency's final action.

- EPA will provide email notification to Tribes of today's final 2017 CGP.

EPA also notes that as part of the finalization of 2017 CGP, it completed the Section 401 certification procedures with all applicable tribes where the 2017 CGP applies (see Appendix B).

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: January 11, 2017.

Deborah Szaro,

Acting Regional Administrator, EPA Region 1.

Dated: January 11, 2017.

Javier Laureano,

Director, Clean Water Division, EPA Region 2.

Dated: January 11, 2017.

Jose C. Font,

Acting Director, Caribbean Environmental Protection Division, EPA Region 2.

Dated: January 11, 2017.

Dominique Lueckenhoff,

Acting Director, Water Protection Division, EPA Region 3.

Dated: January 11, 2017.

César A. Zapata,

Deputy Director, Water Protection Division, EPA Region 4.

Dated: January 11, 2017.

Christopher Korleski,

Director, Water Division, EPA Region 5.

Dated: January 11, 2017.

William K. Honker,

Director, Water Division, EPA Region 6.

Dated: January 11, 2017.

Karen Flournoy,

Director, Water, Wetlands, and Pesticides Division, EPA Region 7.

Dated: January 11, 2017.

Darcy O'Connor,

Assistant Regional Administrator, Office of Water Protection, EPA Region 8.

Dated: January 11, 2017.

Kristin Gullatt,

Deputy Director, Water Division, EPA Region 9.

Dated: January 11, 2017.

Daniel D. Opalski,

Director, Office of Water and Watersheds, EPA Region 10.

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ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OAR-2016-0181; FRL-9958-63-OAR]

California State Nonroad Engine Pollution Control Standards; Evaporative Emission Standards and Test Procedures for Off-Highway Recreational Vehicles (OHRVs); Notice of Decision

AGENCY: Environmental Protection Agency.

ACTION: Notice of decision.

SUMMARY: The Environmental Protection Agency (“EPA”) is granting the California Air Resources Board (“CARB”) its request for an authorization of its amendments to its Off-Highway Recreational Vehicle regulation (“OHRV Amendments”). The OHRV Amendments establish new evaporative emission standards and test procedures for 2018 and subsequent model year OHRVs. The California OHRV category encompasses a wide variety of vehicles, including off-road motorcycles, all-terrain vehicles (“ATVs”), off-road sport and utility vehicles, sand cars, and golf carts. This decision is issued under the authority of the Clean Air Act (“CAA” or “Act”).

DATES: Petitions for review must be filed by March 20, 2017.

ADDRESSES: EPA has established a docket for this action under Docket ID EPA-HQ-OAR-2016-0181. All documents relied upon in making this decision, including those submitted to EPA by CARB, are contained in the public docket. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Air and Radiation Docket in the EPA Headquarters Library, EPA West Building, Room 3334, located at 1301 Constitution Avenue NW., Washington, DC. The Public Reading Room is open to the public on all federal government working days from 8:30 a.m. to 4:30 p.m.; generally, it is open Monday through Friday, excluding holidays. The telephone number for the Reading Room

is (202) 566-1744. The Air and Radiation Docket and Information Center’s Web site is <http://www.epa.gov/oar/docket.html>. The electronic mail (email) address for the Air and Radiation Docket is: a-and-r-Docket@epa.gov, the telephone number is (202) 566-1742, and the fax number is (202) 566-9744. An electronic version of the public docket is available through the federal government’s electronic public docket and comment system. You may access EPA dockets at <http://www.regulations.gov>. After opening the www.regulations.gov Web site, enter EPA-HQ-OAR-2016-0181 in the “Enter Keyword or ID” fill-in box to view documents in the record. Although a part of the official docket, the public docket does not include Confidential Business Information (“CBI”) or other information whose disclosure is restricted by statute.

EPA’s Office of Transportation and Air Quality (“OTAQ”) maintains a Web page that contains general information on its review of California waiver and authorization requests. Included on that page are links to prior waiver **Federal Register** notices, some of which are cited in today’s notice. The page can be accessed at <http://www.epa.gov/otaq/cafr.htm>.

FOR FURTHER INFORMATION CONTACT:

David Dickinson, Attorney-Advisor, Transportation Climate Division, Office of Transportation and Air Quality, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, (6405J), NW., Washington, DC 20460. Telephone: (202) 343-9256. Fax: (202) 343-2800. Email: Dickinson.David@epa.gov.

I. Background

CARB first adopted exhaust emission standards and test procedures applicable to OHRVs and the engines used in OHRVs in 1994, and EPA authorized California to enforce such standards and test procedures in 1996.¹ CARB subsequently adopted amendments to the OHRV regulation in 1996, 1999, 2003, and 2007, and EPA determined those amendments either fell within the scope of previously granted authorizations or met the criteria for a new authorization.²

In 2002, EPA adopted regulations that established both exhaust and evaporative emission standards for nonroad recreational vehicles and engines, including off-road motorcycles

and ATVs.³ EPA’s evaporative emission standards applied to 2008 and subsequent model year nonroad recreational vehicles, and established a fuel tank permeation limit of 1.5 grams per square meter per day (g/m²/day) and a fuel hose permeation limit of 15 g/m²/day. Correspondingly, CARB’s 2007 amendments to their OHRV regulation set forth, among other provisions, evaporative emission standards for new 2008 and subsequent model year OHRVs that are identical to the federal evaporative emission standards for 2008 and subsequent model year nonroad vehicles. In 2014, CARB adopted the OHRV Amendments that establish a new test procedure and evaporative emission standard of 1.0 gram per day (g/day) of total organic gas (TOG) for a 3-day diurnal period.⁴

A. CARB’s Authorization Request

In a letter dated February 26, 2016, CARB submitted to EPA its request pursuant to section 209(e) of the CAA, regarding authorization of its OHRV Amendments.⁵ The CARB Board approved the OHRV Amendments on July 25, 2013 (by Resolution 13-33).⁶ The OHRV Amendments were approved by California’s Office of Administrative Law (OAL) on December 17, 2014 and became operative state law on April 1, 2015.

The OHRV Amendments differ from preexisting OHRV requirements because they impose a 1.0 g/day evaporative emissions standard for the complete OHRV fuel system. Previously the OHRV regulation only required fuel tanks and fuel hoses to meet specific permeation standards. The OHRV Amendments comprehensively address all potential sources of evaporative emissions, including running losses (evaporative emissions generated during vehicle operation), hot soak (evaporative emission generated directly after vehicle operation), and diurnal losses (evaporative emissions generated during long term storage). The OHRV

³ 67 FR 68242 (November 8, 2002). The terms “off-road” and “nonroad” are used interchangeably, generally CARB uses the term off-road and EPA uses the term nonroad.

⁴ CARB’s regulatory text enacted by the OHRV Amendments (which EPA is authorizing by this action), is set forth in California Code of Regulations, Title 13, sections 2416, 2417, 2418, 2419, 2419.1, 2419.2, 3419.3, and 2419.4. A full description of the OHRV Amendments is found in CARB’s Authorization Request Support Document, 2014 Amendments to Evaporative Emissions Control Requirements for Off Highway Recreational Vehicles, dated February 26, 2016 (“Authorization Request Support Document”) at EPA-HQ-OAR-2016-0181-0002.

⁵ Authorization Request Support Document.

⁶ CARB Resolution 13-33, July 25, 2013, EPA-HQ-OAR-2016-0181-0006.

¹ 61 FR 69093 (December 3, 1996).

² 65 FR 69673 (November 20, 2000) [1996 amendments]; 79 FR 6584 (February 14, 2014) [1999, 2003, and 2007 amendments].