

### Advocacy Comments on EPA's Proposed 2022 Construction General Permit

On July 12, 2021, the Office of Advocacy submitted comments to the U.S. Environmental Protection Agency (EPA) on its proposed 2022 Construction General Permit (CGP). The regulation includes obligations for operators of construction sites to implement stormwater controls as well as collect data on turbidity of discharges into certain waters of the United States.

- Under the Clean Water Act (CWA) EPA is authorized to issue a National Pollutant Discharge Elimination System (NPDES) permit for the discharge of any pollutant into a water of the United States from a point source. Under section 405 and 402 of the CWA EPA was required to develop an approach to regulate municipal and industrial stormwater discharges under the NPDES program. In response, EPA created the Construction General Permit program in 1992 to regulate discharges of pollutants from construction activities.
- On May 12, 2021, EPA published its proposed 2022 CGP, requiring certain operators in the construction industry to take preemptive and corrective action to limit discharges into waters of the United States. The proposed rule adds additional data collection and monitoring requirements for operators discharging into Tier 2, 2.5, and 3 waters of the United States and requires construction site inspectors to complete EPA-approved inspection courses. The proposed rule also expands the definition of “corrective action,” which increases certain recordkeeping and compliance obligations.
- Advocacy is concerned about the potential effects the rule will have on small operators if it is finalized without modifications. Advocacy made the following comments and suggestions to the agency:
  1. EPA must comply with the Regulatory Flexibility Act by either conducting an initial regulatory flexibility analysis or certifying that the CGP, if promulgated, would not have a significant impact on a substantial number of small entities.
  2. CGP authorization should begin fourteen days after submission by an operator of its Notice of Intent to EPA.
  3. The definition of “corrective action” should be narrowed to those actions taken to fix machineries or structures resulting from an unexpected structural failure.
  4. Data deficiencies and assumptions should be corrected in EPA’s analysis on the cost of corrective actions to operators.
  5. Vegetative strips should be listed as an example of an acceptable perimeter control.
  6. The acreage threshold for site stabilization timeline requirements should be increased.
  7. Operators should not be required to treat uncontaminated, non-turbid water for turbidity.
  8. Turbidity monitoring should be required only under limited circumstances.



9. Construction sites that discharge into Tier 2, 2.5, and 3 waters should be inspected after a snow event only if there is snow accumulation of 3.25 inches or greater.
10. Operators should not be required to examine downstream properties owned by someone other than the operator.
11. Operators should not be required to suspend their construction activities if a downstream water which the operator discharges into is contaminated with hydrocarbons and comparable plumes by someone other than the operator.
12. Site inspectors should not be required to take an EPA inspection course not yet developed. Similarly, site inspectors require more clarification from EPA what licensing boards or certification boards are permitted to issue construction site inspection licenses and certifications.
13. Safe harbors should be granted to operators who have submitted a Notice of Termination to EPA after a reasonable amount of time after submission.

For more information visit Advocacy's web page at [advocacy.sba.gov](http://advocacy.sba.gov), or contact Astrika Adams at (202) 205-6948 or [astrika.adams@sba.gov](mailto:astrika.adams@sba.gov).