

AZPDES Stormwater Construction General Permit an Update

March 20, 2012

Topics Covered in Today's Discussion

- ❑ Introduction to NPDES/AZPDES
- ❑ Effluent Limitation Guidelines (40 CFR 450)
- ❑ Update on U.S. EPA CGP
- ❑ Arizona CGP Development Process

Introduction to NPDES/AZPDES

Clean Water Act – Section 402(p):

Establishes permitting requirements for municipal and industrial stormwater permitting.

Introduction to NPDES/AZPDES

Pursuant to state and federal rules, AZPDES general permits must be re-issued every 5 years. ADEQ re-issued the 2003 CGP in February 2008.

A.A.C. R18-9-C903(A)(1)

40 CFR 122.46(a)

Introduction to NPDES/AZPDES

Question:

What if a permit is not re-issued before it expires?

Answer:

The permit may be “administratively continued.”

Introduction to NPDES/AZPDES

If a permit is administratively continued, “Any permittee granted coverage *before* the expiration date automatically remains covered by the continued permit...,” until the department re-issues the permit or the permittee submits a Notice of Termination (A.A.C. R18-9-C903(B))

Effluent Limitation Guidelines

Quick history on the Stormwater

Construction ELG:

- EPA challenged by Natural Resource Defense Counsel arguing EPA had a nondiscretionary duty to promulgate ELG for the construction industry.
- June 2006 U.S. District Court agreed with NRDC and ordered EPA to promulgate ELGs by December 2009.

Effluent Limitation Guidelines

- November 2008 EPA issued a draft of the proposed ELGs.
- The draft rule proposed three effluent limitations representing Best Practicable Technology (BPT), 1) Erosion Control, 2) Sediment Control, and 3) Pollution Prevention; and effluent limitations reflecting Best Available Technology (BAT) which established a numeric limit on sediment at **13 NTUs**.

Effluent Limitation Guidelines

December 2009 EPA published the final regulation for construction ELG.

450.21 establishes 6 ELs based on BPT:

- 1) Erosion and Sediment Control,
- 2) Soil Stabilization,
- 3) Dewatering,
- 4) Pollution Prevention,
- 5) Prohibited Discharges, and
- 6) Surface Outlets.

Effluent Limitation Guidelines

450.22 establishes ELs based on BAT.

- Changed the average daily numeric turbidity limit to 280 NTUs.
- Remember – the numeric limit in the draft was 13 NTUs.

Effluent Limitation Guidelines

- EPA was challenged on the numeric limit of 280 NTUs.
- EPA acknowledged an error in calculating the numeric limit.
- The numeric limit is stayed indefinitely.
- The 6 non-numeric limits are not stayed and remain in effect.
- Similar to EPA, authorized states must incorporate the requirements into their re-issued CGPs.

U.S. EPA CGP Review

U.S. EPA issued a draft CGP in 2011 for review and comment.

Key elements of the 2011 draft CGP:

- Draft permit was re-organized and gave it a different structure and appearance over previous CGPs;

U.S. EPA CGP Review

- Incorporated 40 CFR 450.21 (non-numeric effluent limitations);
- Incorporated a place holder for 40 CFR 450.22 (numeric turbidity limit...280 NTUs);
- Introduced a new section for Corrective Actions; and
- Established staff training requirements.

U.S. EPA CGP Review

On February 16, 2012 U.S. EPA issued the final CGP.

Key elements of U.S. EPA's 2012 Final CGP:

- Provides for emergency-related CAs;
- Changed NOI authorization period from 7 days to 14 days (primarily for endangered spp. review);
- Incorporates the non-numeric ELGs. The 2008 CGP included some of these same requirements, but the 2012 includes more detail and specificity to track the language of 450.21.

U.S. EPA CGP Review

Key elements of U.S. EPA's 2012 Final CGP (cont'd):

- Natural buffers or alternative controls;
- Sediment and erosion controls;
- Staff training; and
- Permit termination.

U.S. EPA CGP Review

- Of the 6 non-numeric ELGs, only three are “specifically” addressed (Sediment and Erosion Control, Stabilization, and Pollution Prevention). The other 3 ELGs are “incorporated” else where throughout the permit.
- Because the numeric ELG is stayed, U.S. EPA’s 2012 Final CGP does not include a numeric limit.

Arizona CGP

ADEQ's approach to re-issuing Arizona's CGP on or before the 2008 CGP expires (February 28, 2012):

- Work with stakeholders to evaluate ADEQ's 2008 CGP and U.S. EPA's 2012 CGP;
- Hold regular meeting with stakeholders; and
- To the extent practicable, utilize ADEQ's 2008 CGP requirements to satisfy ELGs.

Anticipated Arizona CGP Schedule

- *November 2, 2011 (Stakeholder Kickoff Meeting)*
- *February 15, 2012*
- *February 23*
- *March 6*
- *March 21*
- *April 3*
- *April 18*
- *May 1*
- *May 16*
- *May 30 – Last Scheduled Stakeholder Meeting*
- *September 1, 2012 – Scheduled date for public notice*
- *October 1, 2012 – Close of public comment*
- *February 28, 2012 (on or before) – Re-issue CGP*

Re-Issuing Arizona's CGP

- Stakeholder meetings are held at ADEQ's Phoenix office location.
- A remote location in Tucson is also available.

Re-Issuing Arizona's CGP

Some Key Topics ADEQ and Stakeholders are Discussing:

- Buffers: Considering buffer requirements to perennial water;
- Inlet Protection: Dependent on where the discharge is to (surface water, retention basin, etc.);
- Inactive / Unstaffed Sites: Construction activity was initiated, but suspended before completion;
- Operator: Who is subject to permitting requirements;

Re-Issuing Arizona's CGP

Some Key Topics ADEQ and Stakeholders are Discussing:

- Training: Does not equal certification;
- Steep Slopes: Avoid / preserve / stabilize;
- Linear projects: Utility, roadway, etc.
- Waivers: Erosivity and small construction sites;
- Other....

CGP Fees

Coverage is now Subject to AZPDES Fees

- Fees became effective July 1, 2011
- Processing fee at the time the NOI is submitted
- Annual fee on anniversary date of coverage

CGP Fees

Fee Structure:

- Less than or equal to 1 acre = \$250.00
- Greater than 1 acre, but less than or equal to 50 acres = \$350.00
- Greater than 50 acres = \$500.00
- SWPPP Review = \$1,000.00
- SWPPP Re-review = \$500.00

What is Next

The department will continue to work with stakeholders to develop the permit requirements for each section.

Your participation in the process is appreciated.

Stormwater Contacts at ADEQ

- Stormwater & General Permits Unit

- Chris Henninger (602) 771-4508

cph@azdeq.gov

- Joanie Rhyner (602) 771-7614

jmr@azdeq.gov