

Environmentalists and Industry Group Oppose 2017 NPDES Permit

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In a case of strange bedfellows, environmental activists and a homebuilders association have found their petitions for review of the [2017 National Pollutant Discharge Elimination System \(NPDES\) General Permit for Stormwater Discharges from Construction Activities \(CGP\)](#) consolidated in federal court.

EPA's NPDES CGP authorizes stormwater runoff from construction sites. With limited exceptions, NPDES permits are required for discharges from construction activities that disturb more than one acre, as well as discharges from smaller sites that are part of a larger common plan of development or sale. On February 16, 2017, the 2017 NPDES CGP took effect, replacing the 2012 CGP. While the CGP became effective in only four states that are not authorized to issue their own NPDES permits (Idaho, Massachusetts, New Hampshire, and New Mexico), the CGP serves as a model for the individual states' stormwater permitting regulations.

Prior to the effective date of the 2017 CGP, the National Association of Home Builders (NAHB) sent a [letter](#) to EPA and the White House Office of Management and Budget (OMB) requesting that the CGP be reviewed pursuant to the January 20, 2017 presidential directive calling for a regulatory freeze and review of all significant regulations issued at the end of the prior administration (for more information on the impact of the regulatory freeze on environmental regulations, see our prior [blog post](#)). NAHB specifically objected to language in the 2017 CGP that it believed implied EPA has the legal authority to hold CGP permit holders liable, either jointly or severally, for another builder's or developer's failure to comply with the Clean Water Act. The CGP was not delayed by the regulatory freeze, however, and went into effect in February 2017. NAHB filed a Petition for Review of the 2017 CGP in the U.S. Court of Appeals for the District of Columbia Circuit on February 6, 2017.

The Chesapeake Bay Foundation (CBF) and Potomac Riverkeeper, Inc. (PRK), both of which are environmental advocacy groups, also oppose the 2017 CGP, on the basis that the permit does not do enough to protect the environment. CBF and PRK filed their Petition for Review of the 2017 CGP in the U.S. Court of Appeals for the District of Columbia Circuit on May 25, 2017; the two petitions were consolidated that same day.

A vast array of construction projects in the United States are implicated by the CGP; any significant changes to the Permit, its implementation, or its interpretation will be closely monitored by industry groups and environmental watchdogs alike.

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