

Water Quality Certification

#2019-001

Under 33 U.S.C. § 1341

For Modifications to U.S. E.P.A. 2017

Construction General Permit



VERMONT DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

WATERSHED
MANAGEMENT DIVISION

I. INTRODUCTION

On December 26, 2018 the United States Environmental Protection Agency (EPA) requested that the Department of Environmental Conservation grant certification under section 401 of the Clean Water Act or waive its right to certify EPA's proposed modification to the 2017 Construction General Permit.

Pursuant to Section 13.11 of the Vermont Water Pollution Control Permit Regulations (February 26, 1974) (VWPCPR) and the Agency of Natural Resources' Section 401 Water Quality Certification Practice (October 22, 2014), the Secretary (Secretary) of the Vermont Agency of Natural Resources (Agency or ANR) has reviewed EPA's request.

Pursuant to the VWPCPR §§ 13.11(c)-(f), the Agency provided public notice of its preliminary decision in this matter on February 19, 2019 and provided the opportunity to request a public meeting.

II. BACKGROUND

The EPA has jurisdiction over projects undertaken by Federal Operators in Vermont for purposes of permitting under the National Pollutant Discharge Elimination System (NPDES). The EPA is proposing modifications to EPA's 2017 Construction General Permit. EPA's Construction General Permit will apply to all federal facilities undergoing regulated construction activities in the State of Vermont and may affect Class A1, A2, and B waters.

The EPA Construction General Permit (CGP) became effective on February 16, 2017. The modifications currently proposed to the permit include removing examples of the types of parties that could potentially be considered "operators," aligning three requirements that implement the Construction and Development Effluent Limitations Guidelines (ELG) and New Source Performance Standards (NSPS) more closely with the ELG text; and clarifying individual operator responsibilities.

III. CONDITIONS

The Secretary has reviewed EPA's proposed modifications to the CGP, and this decision is based upon an evaluation of the information contained within the proposed general permit and other requirements of state and federal law relevant to the Agency's responsibilities under Section 401 of the federal Clean Water Act. The Agency certifies that there is a reasonable assurance that construction and operation of the projects authorized under EPA's proposed general permit and in accordance with the following conditions will not cause a violation of the Vermont Water Quality Standards (VWQS) and will be in compliance with sections 301, 302, 303, 306, and 307 of the federal Clean Water Act, 33 U.S.C. § 1341, as amended, and other appropriate requirements of state law. This Certification is granted pursuant to the following conditions to be applied to all regulated activities in Vermont:

- A. Earth disturbance at any one time is limited to five acres.
- B. All areas of earth disturbance must have temporary or final stabilization within 14 days of the initial disturbance. After this time, disturbed areas must be temporarily or permanently stabilized in advance of any runoff producing event. A runoff producing event is an event that produces runoff from the construction site. Temporary stabilization is not required if the work is occurring in a self-contained

excavation (i.e. no outlet) with a depth of two feet or greater (e.g. house foundation excavation, utility trenches). Areas of a construction site that drain to sediment basins are not considered eligible for this exemption, and the exemption applies only to the excavated area itself.

- C. The use of the cationic polymers is prohibited unless approved under a site-specific plan.
- D. Site inspections on active construction sites shall be conducted daily during the period from October 15 – April 15.
- E. Any applicant under EPA’s CGP shall allow authorized Agency representatives, at reasonable times and upon presentation of credentials, to enter upon the project site for purposes of inspecting the project and determining compliance with this Certification.
- F. The Agency may reopen and alter or amend the conditions of this Certification over the life of the project when such action is necessary to assure compliance with the VWQS.

IV. BASIS FOR CONDITIONS MORE STRINGENT THAN EPA’S PROPOSED GENERAL PERMIT; STATEMENT OF EXTENT TO WHICH EPA’S GENERAL PERMIT CAN BE MADE LESS STRINGENT

The Secretary is authorized to implement a constructions stormwater permit program consistent with federal NPDES standards pursuant to 10 V.S.A. §§ 1263 and 1264. The conditions proposed by the Secretary in subsections III. A- D are consistent with Vermont’s forthcoming Construction General Permit and are deemed necessary by the Secretary to ensure compliance with the Vermont Water Quality Standards.

- Condition A is requested to ensure larger areas of disturbance are managed under an individual permit.
- Condition B is requested to prevent unnecessarily protracted periods of construction. EPA’s proposed General Permit sets no limit to the duration a construction site may be disturbed by construction activities. Instead, under EPA’s proposed General Permit stabilization requirements do not commence until a permittee has ceased construction activities.
- Condition C is requested based on the potentially adverse affect associated with the use of chemical treatment.
- Condition D is requested to address the higher risk of discharges associated with construction activities that take place outside the growing season.

The Secretary has determined that the conditions in EPA’s proposed Construction General Permit may not be made less stringent without the potential for violating Vermont’s Water Quality Standards.

V. APPEALS

Pursuant to 10 V.S.A. Chapter 220, any appeal of this decision must be filed with the clerk of the Environmental Division of the Superior Court within 30 days of the date of the decision. The Notice of Appeal must specify the parties taking the appeal and the statutory provision under which each party claims party status; must designate the act or decision appealed from; must name the Environmental Division; and must be signed by the appellant or the appellant’s attorney. In addition, the appeal must give the address or location and

description of the property, project, or facility with which the appeal is concerned and the name of the applicant or any permit involved in the appeal. The appellant must also serve a copy of the Notice of Appeal in accordance with Rule 5(b)(4)(B) of the Vermont Rules for Environmental Court Proceedings. For further information, see the Vermont Rules for Environmental Court Proceedings, available on line at www.vermontjudiciary.org. The address for the Environmental Division is: 32 Cherry St.; 2nd Floor, Suite 303; Burlington, VT 05401; Telephone # 802-951-1740.

VI. EFFECTIVE DATE & EXPIRATION

This certification shall become effective on the date of signing, and the conditions of this Certification shall become conditions of the federal permit (33 U.S.C. § 1341(d)).

Dated this day of April 2, 2019

Emily Boedecker, Commissioner
Department of Environmental Conservation

By  _____
Peter LaFlamme, Director
Watershed Management Division