



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
5 POST OFFICE SQUARE SUITE 100
BOSTON, MASSACHUSETTS 02109-3912

VIA EMAIL - RETURN RECEIPT REQUESTED

June 17, 2021

Mr. Peter LaFlamme, Water Division Director
Agency of Natural Resources
Department of Environmental Conservation
Davis Building - 3rd Floor
One National Life Drive
Montpelier, VT 05620-3520
pete.laflamme@vermont.gov

Re: Request for Clean Water Act Section 401 Certification for the
National Pollutant Discharge Elimination System (NPDES) Proposed 2022 Construction
General Permit

Dear Mr. LaFlamme,

The U. S. Environmental Protection Agency (EPA) is in the process of reissuing the National Pollutant Discharge Elimination System (NPDES) Construction General Permit (CGP) for stormwater discharges from construction activities. The draft permit authorizes stormwater discharges associated with industrial activity at Federal facilities into the waters of Vermont. EPA may not issue an NPDES permit to conduct any activity that may result in any discharges into the waters of your State until the State of Vermont has granted certification under Clean Water Act (CWA) section 401, or has waived its right to certify. 33 U.S.C. 1341(a)(1); 40 C.F.R. 124.53(a). Your CWA section 401 certification must be based on the draft general permit published on May 12, 2021. 40 C.F.R. 124.53(c)(1). EPA requests that the Vermont Department of Environmental Conservation review and take action on this CWA section 401 certification request within the applicable reasonable period of time.

The reasonable period of time for CWA certification of EPA-issued NPDES permits is normally 60 days, unless there is a determination that "unusual circumstances require a longer time." See 40 CFR 124.53(c)(3). EPA is setting the reasonable period of time for this certification request for 60 days, which will be August 16, 2021 (60 days after this request was sent). Thus, the State of Vermont will be deemed to have waived its right to certify unless that right is exercised by August 16, 2021 (60 days after this request was sent). 40 C.F.R. 124.53(c)(3).

Redline/strike-out versions the draft 2022 CGP, Appendices, and Fact Sheet are attached. The draft permit, fact sheet, and all supporting documents are available on the public docket on [regulations.gov](https://www.regulations.gov) (Docket ID# EPA-HQ-OW-2021-0169). Copies of the draft permit, fact sheet, and Federal Register notice are available on EPA's NPDES construction stormwater website:

<https://www.epa.gov/npdes/proposed-2022-construction-general-permit-cgp-and-related-documents>. EPA estimates that 2,600 operators nationwide are covered by the CGP on an annual basis. If you need assistance in determining the scope of coverage in your jurisdiction, please notify the contact listed below. Also attached is documentation that EPA Region 1 has submitted a pre-filing meeting request at least 30 days prior to submitting this certification request.

If the State chooses to submit a certification, with or without conditions, that certification must be in writing and must include:

- 1) Any specific conditions necessary to assure compliance with the applicable provisions of CWA sections 208(e), 301, 302, 303, 306, and 307 and with appropriate requirements of State law. 33 U.S.C. 1341(d); 40 C.F.R. 124.53(e)(1).
- 2) If you include one or more conditions more stringent than those contained in the draft permit as necessary to meet the requirements of either the CWA or State law, you must cite the CWA or State law reference upon which that condition is based. Failure to provide such a citation waives your right to certify with respect to that condition. 40 C.F.R. 124.53(e)(2).
- 3) A statement of the extent to which each condition of the draft permit can be made less stringent without violating the requirements of State law, including water quality standards. Failure to provide this statement for any condition waives the right to certify or object to any less stringent condition which may be established during the EPA permit issuance process. 40 C.F.R. 124.53(e)(3).

Please note that any comments that you may have submitted to EPA during the 60-day public comment period (from May 12, 2021 – July 12, 2021) will not be considered part of the State CWA section 401 certification. Any such comments will be evaluated, along with other public comments, as part of the overall public comment review and finalization of the draft permit. If you wish for any comments or permit limitations that you submitted during the 60-day public comment period to be included as part of your CWA section 401 certification, they must be submitted separately as part of your CWA section 401 certification.

Please send your certification to: schaner.greg@epa.gov

Following review of the public comments received during the public comment period and receipt of your certification or waiver thereof, EPA will issue the final 2022 CGP. The final 2022 CGP will incorporate any appropriate conditions specified in the State's certification. 33 U.S.C. 1341(d).

The permit, once final, will be available at: <https://www.epa.gov/npdes/stormwater-discharges-construction-activities>.

If you have any questions, please contact Greg Schaner at 202-564-0721, or by email at schaner.greg@epa.gov. Thank you for your cooperation.

Sincerely,

Lynne Jennings, Chief
Water Permits Branch

cc: David Gray (via email)

Attachments