May 26, 2016

AGA Comments on
NPDES Draft 2017 General Permit for Stormwater Discharges from
Construction Activities

The American Gas Association (AGA) appreciates the opportunity to comment on the U.S. Environmental Protection Agency’s (EPA) proposed 2017 Construction General Permit (Draft 2017 CGP) and to respond to EPA’s request for comments in EPA’s related Fact Sheet and the Federal Register notice captioned above (Notice).

The American Gas Association, founded in 1918, represents more than 200 local energy companies that deliver clean natural gas throughout the United States. There are more than 72 million residential, commercial and industrial natural gas customers in the U.S., of which 95 percent — just under 69 million customers — receive their gas from AGA members. AGA is an advocate for natural gas utility companies and their customers and provides a broad range of programs and services for member natural gas pipelines, marketers, gatherers, international natural gas companies and industry associates. Today, natural gas meets more than one-fourth of the United States’ energy needs.

AGA is concerned that the Draft 2017 CGP fails to recognize and address the unique nature of our members’ linear utility work. Natural gas utilities must perform many construction projects each year as part of their core business of providing safe and reliable essential public services to their existing and new customers. By nature, these are linear projects that pose only temporary disturbances within a very narrow corridor or right-of-way, often in urban areas. Utilities follow best management practices (BMPs) to minimize these temporary impacts, and they restore the site — typically within days — to its previous condition. That means either replacing pavement, sidewalks, and/or grass in urban or
suburban areas. In less urbanized areas, it typically means reseeding to restore natural vegetation, depending on the location. Examples are provided in Exhibit A to these comments.

In our comments, we focus on provisions in the 2017 Draft CGP and its appendices that would impose unnecessary burdens on this important public utility work without compensating environmental benefits, and we offer alternatives that can better achieve EPA’s goals while facilitating pipeline safety and the reliable delivery of energy to industrial, commercial and residential customers across the country. In part A, we respond to EPA’s list of specific requests for comments, and in part B of our comments, we offer our comments on revised provisions within the Draft 2017 CGP and Appendices that raise concerns.

A. EPA’s Specific Requests & AGA’s Responding Comments

In the Draft 2017 CGP and the Draft “Fact Sheet,” EPA has highlighted in red font a series of specific requests for comment. AGA provides corresponding responsive comments below.

**EPA Request for Comment 1 (Draft 2017 CGP p.1) Group SWPPPs:** EPA requests comment on whether the permit should include a provision for sites with multiple operators requiring those operators to develop a group SWPPP, which would provide in one place documentation as to how the permit responsibilities will be divided among all the permitted parties.

**AGA RESPONSE 1 – Group SWPPP Should be Voluntary Not Mandatory:** The current permit language allows for projects with multiple operators to complete independent Stormwater Pollution Prevention Plans (SWPPP) or a group SWPPP. This option should be retained in the final 2017 CGP. The definition of “Operator” under the Draft 2017 CGP would require the owner as well as the contractors to obtain permit coverage for each activity subject to a permit. In the proposed revision, the EPA would remove the option for Individual SWPPP’s to be prepared and require that one group SWPPP be prepared. Depending on
the requirements for a group SWPPP, this document could be developed using the individual SWPPP's prepared by each operator as appendices. AGA strongly opposes this proposed change. AGA urges EPA to retain the flexibility to use individual SWPPPs, and not require group SWPPPs every time a site has multiple operators. The use of a group SWPPP should be voluntary.

The requirement for preparing a group SWPPP would likely impose serious burdens on the primary operator for such projects, including some facility development sites that include a need for utility lines, where multiple operators and their respective projects/activities occur over a longer timeline and do not overlap chronologically (e.g., where the clearing contractor is complete and gone prior to the grading contractor showing up, and the restoration contractor will not be at the site for over a year). Our member utilities often are asked to relocate pipelines for roadway authorities or to install new pipelines for subdivision developers. These projects are part of larger projects with numerous utilities and contractors involved. While there is value in coordinating SWPPP preparation and implementation, the logistics of a group SWPPP could be problematic where a development project involves various roadway authorities, developers, and utilities on fluctuating schedules that might extend over several years. It is unreasonable to require an operator to submit the SWPPP for natural gas transmission or distribution activities that may follow a year or more after other construction is complete. Further, since the activities are significantly different, the required stormwater controls and SWPPP for each contractor will likely be significantly different. Further, it may also be burdensome for the operator to initiate the documentation due to contractual conditions and release contractors when they are complete, as most contracts commonly call for compliance with all permit requirements, including the Notice of Termination.

Additionally, for pipeline projects, there are situations where it makes sense to allow the option for different operators to have separate SWPPPs. For example, consider the situation where one contractor is constructing the pipeline, and a different contractor is constructing the surface facilities such as compressor stations. The types of construction require different construction techniques and best management practices. Requiring both contractors to work out of a single SWPPP means that for each operator there will be...
significant portions of the SWPPP that do not apply to their activities. This has the potential to create confusion and undermine compliance.

It is not uncommon for contractors to be under contractual agreements regarding compliance, and for penalties to be contractually imposed for non-compliance. If multiple contractors are working on the same site under the same SWPPP, it makes it difficult to enforce those penalties as there may be increased confusion over which contractor is responsible for a problem.

AGA urges EPA not to require a group SWPPP, but to allow a group SWPPP as an option – and to allow a utility for example to install natural gas lines under a developer’s SWPPP. In our members’ experience, typically a developer will obtain a group SWPPP for their overall site development, including utilities and road access. However, sometimes a developer may decide at the last minute that they want to have natural gas service for their residential or commercial project. This allows little or no time for the utility to obtain its own permit coverage. It would be helpful in such situations if the gas distribution utility could be allowed to install a natural gas distribution line under the developer’s existing SWPPP.

EPA Request for Comment 2 (Draft 2017 CGP p. 4) Building Washdown: EPA has proposed a new condition that such building washdown discharges must not contain hazardous substances and has requested comment on this proposed new condition.

AGA RESPONSE 2: The proposed new condition is not expected to cause any increased burden for natural gas transmission or distribution activities.

EPA Request for Comment 3 (Draft 2017 CGP p. 13) Deadline for Stabilization: EPA is considering modifying the deadline “to complete stabilization activities” from 14 calendar days to 7 calendar days after stabilization has been initiated (except for sites in arid, semi-arid, and drought-stricken areas and for permittees affected by circumstances beyond their control) “in order to ensure discharges meet water quality standards.” EPA has requested comment on this change.
AGA RESPONSE 3: EPA Should Not Shorten the Timeframe from 14 to 7 Days for Soil Stabilization, Should Retain the Proposed Exceptions for Arid Areas, and Should Clarify What is to be “Completed”

First, EPA should retain the 14-day timeframe for soil stabilization. In 2.2.14, the Draft 2017 CGP provides that in order to minimize erosion, operators must “[i]nitiate the installation of stabilization measures immediately in any areas of exposed soil where the construction activities have ceased and will not resume for 14 or more calendar days” and must complete the installation of such measures “as soon as practicable, but no later than 14 calendar days after stabilization has been initiated.” In the request for comment, EPA states it is considering changing the deadline to complete the installation of stabilization measures from 14 calendar days to 7 calendar days, explaining that 7 days is the current time-frame in which to complete installation of stabilization for so-called “sensitive waters. EPA explains that this change is intended to ensure that “discharges meet water quality standards.” Id.; Draft 2017 CGP Fact Sheet at 53-54.

AGA agrees with the Utility Water Act Group (UWAG) in comments filed in this docket that EPA’s stated reason (ensuring discharges meet water quality standards) makes little sense in light of EPA’s statements in Part 3 of the Draft 2017 CGP. EPA asserts: “In the absence of information demonstrating otherwise, EPA expects that compliance with the conditions in this permit will result in stormwater discharges being controlled as necessary to meet applicable water quality standards.” Draft 2017 CGP Part 3.1. Based on this statement, unless there are site specific reasons suggesting otherwise, compliance with the 14 day deadline will result in meeting water quality standards.

In addition, reducing the deadline to 7 days is generally not appropriate, especially for linear energy infrastructure projects. Because these projects often can stretch for miles and be located in remote locations, operators need as much time as possible to coordinate and implement stabilization measures, particularly given that despite the 14 day inactivity period, the duty to initiate the installation of stabilization measures is triggered as soon as the operator knows that construction will be temporarily ceased and will not resume for 14 or more days. Id. Part 2.2.14 n.27. Difficulties are increased given that stabilization crews often are not the same as the construction crews.
If EPA nevertheless adopts the shorter 7-day deadline to complete the installation of stabilization measures, EPA should clarify that the 14-day inactivity period that triggers the requirement to initiate the installation of stabilization measures still applies.

Second, AGA supports the exception for arid, semi-arid, and drought-stricken areas and circumstances beyond the control of permittees (which could include winter temperatures in northern climates). This is essential for projects that take place in areas where seeds and plants are challenged by arid conditions or severe temperatures.

Third, EPA should define “Immediately” as used in Part 2.2.14 to allow unique challenges relating to site conditions or weather. In footnote 27 to Part 2.2.14 of the Draft 2017 CGP, EPA makes the following statement: “…In the context of this provision, ‘immediately’ means as soon as practicable, but no later than the end of the next business day, following the day when the construction activities have temporarily or permanently ceased.” AGA recommends that EPA revise this statement as follows: In the context of this provision, “immediately” means as soon as practicable, but no later than the end of the next business day, following the day when the construction activities have temporarily or permanently ceased, unless infeasible. This revision would address situations where weather or site conditions prohibit this activity.

Fourth, EPA should clarify that the shorter deadline for installation of stabilization measures applies only during the locally established rainy season (e.g., October 1 to April 30) as there is no justification for having a shorter deadline when the threat of rain is low (i.e., periods of infrequent rain events).

**EPA Request for Comment 4 (Draft CGP p. 18):** EPA requests comment on additional controls or requirements EPA should consider ensuring that discharges of pollutants in construction dewatering discharges are minimized.

**AGA RESPONSE 4 – Add Straw Bale:** Straw bale or equivalent dewatering structures should be included as an appropriate control.
EPA Request for COMMENT 5 (Draft 2017 CGP p. 20) Inspection Frequency: EPA has requested comment on inspection frequency. In particular, EPA proposes modifying the minimum site inspection frequency to once every 7 calendar days and within 24 hours of the occurrence of a storm event of 0.25 inches or greater. Under the current 2012 CGP, this inspection frequency applies only to sites discharging to sensitive waters (i.e., impaired waters and Tier 2, 2.5, or 3 waters). EPA requests comment on whether to apply this to all sites (except for sites qualifying for a reduction in inspection frequency in Part 4.4 below).

AGA RESPONSE 5 – EPA Should Retain 14 Day Inspection Cycle and Should Not Require Inspections within 24 Hours of a 0.25 inch Rain Event:

AGA strongly opposes EPA’s proposal to eliminate the option for conducting inspections once every 14 days and we urge EPA not to require inspections every 7 days. We also urge EPA to delete the proposed 24-hour requirement for inspections. We object both to the burdensome 24-hour timeframe and to the unreasonable trigger (a 0.25 inch rain event). Our reasons follow.

We urge EPA to retain the current inspection frequency of 14 days, because it provides the Operator flexibility in complying with the permit requirements while accommodating project conditions, resources, and economics. Additionally, EPA has not demonstrated that the proposed change in inspection frequency provides appreciable incremental protection where the receiving waters are not sensitive waters.

In EPA’s scenario 1, the increased inspection frequency (currently in place for projects that discharge to high value or impaired waters) from 14 days to 7 days would result in an increased inspection schedule from 14 days to 7 days, where no rain events occurred. For projects with low potential for runoff or in more remote areas, this could significantly increase the inspection costs while conferring little or no environmental benefit.
The 24-Hour Inspection Timeframe is Unreasonably Short:

AGA also strongly opposes the proposal to require inspections within 24 hours after a triggering rain event. For those permittees that typically adopt the inspection schedule of once every 7 days, the addition of inspections required within 24 hours of a 0.25 inch rain event has the potential to significantly increase the number of inspections within a 7 day period.

If EPA nevertheless retains the proposed 24-hour requirement, at the very least, it should allow for workforce constraints on weekends and holidays, especially for linear projects that can extend for miles and be located in remote areas. For linear construction projects, EPA could provide that a site inspection should begin within 24 hours after the triggering rain event or the next working be completed no later than five (5) days after the qualifying precipitation event. This would allow for situations where a qualifying precipitation event occurs on a Friday night or a holiday on a remote job site where no one is working over the weekend or holiday. Inspection can occur when active work resumes on a normal work day. This will reduce, although not eliminate, the unnecessary resource burdens and costs on utilities of imposing a short turnaround inspection after a small rain event.

Rain Event of 0.25 Inches is an Unreasonably Low Trigger for Inspection:

In addition to the unreasonable timeframe, AGA also strongly opposes triggering a short turnaround inspection based on a rain event of only 0.25 inches -- regardless of whether this occurs in a wet or an arid part of the country. A rain event of 0.25 inches may be relatively rare but have more impact in an arid area, while in a lushly-vegetated wet area with higher organic material in the soil, such an event may have little effect on stormwater runoff. The “qualifying precipitation event” trigger for inspection should be geographically specific to reflect these regional differences.

For example, in their response to EPA’s request for comments, the Minnesota Pollution Control Agency (MPCA) noted that while runoff from a 0.5 inch rain event typically accounted for 25 percent of runoff, runoff volumes from a 0.25 inch rain event only accounted for about 10 percent of the total runoff. The increase in inspection frequency to
monitor 0.25 inch rain events could increase inspections exponentially for rainfall events with low potential for runoff.

Notably, the City of Kansas City, which has an aggressive stormwater program, only requires an extra inspection when a rainfall event of over 0.5 inches has occurred. EPA has not provided any rational basis in the record to demonstrate a need to require an extra inspection when there has been a 0.25 inch rainfall within 24 hours.

In EPA’s scenario 2, the option of conducting inspections once every 14 days and within 24 hours of 0.25 rain event would be revised to require conducting inspections once every 7 days, regardless of rain. This scenario would also result in increased inspection costs. For projects located in rural or remote locales and/or constructed during seasons with low potential for rainfall, removing the option for a 14 day rotation (unless a 0.25 rain event occurs) would double the cost of the inspection requirements, while conferring little or no environmental benefit. For smaller businesses working in more remote areas, the increased economic costs of the increased inspections could eliminate them from pursuing new business.

EPA Request for Comment 6 (Draft 2017 CGP p. 20) Snowmelt Inspections: EPA requests comment on the frequency of inspections that should be required for snowmelt runoff.

AGA RESPONSE 6 – Redefine Snow Melt: The 2017 Draft CGP defines snow melt as: “Snowmelt” – “the conversion of snow into overland stormwater and ground water flow as a result of warmer temperatures.” The definition focuses on the melting of the snow without addressing runoff, which is the component of snowmelt that has the potential to affect erosion and sediment migration. Instead, the EPA should redefine “snowmelt” as the conversion of snow into overland stormwater and the associated runoff encountering exposed soils. The inspections associated with snowmelt should be initiated when the runoff from snowmelt would be in contact with the disturbed and/or stabilized soils. The actual event of snowmelt should be regulated only when the potential exists for runoff to encounter the disturbed and/or stabilized soils.
EPA Request for Comment 7 (Draft 2017 CGP p. 32) Publicizing SWPPPs: EPA states it is considering requiring the initial SWPPP to be made publicly available by requiring operators to either post their SWPPP online on a website or submit it to EPA. The agency asserts that this will lead to enhanced transparency and availability of CGP SWPPP information. AGA disagrees.

AGA RESPONSE 7 – AGA Strongly Opposes Requiring Posting or Disclosing Sensitive Security Information in SWPPPs

We oppose this proposal on several grounds. Public posting/accessibility of detailed information contained in the SWPPP would create cyber and physical security concerns. A number of factors make this proposal a security concern. Certain natural gas industry sites such as compressor stations, meter stations, mainline valves, are considered critical energy infrastructure (CEI) and are thus restricted from public availability. Some companies identify sensitive resources, such as archaeological sites or endangered species resource areas, on their alignment sheets to ensure that those areas are protected; publication of this information could threaten these resources.

The SWPPPs also include other data that could problematic if it is made public, such as personal cell phone numbers for contacts (the use of cell phones are more necessary for construction projects than for existing facilities, because of the lack of existing infrastructure). Detailed plot plans, facility locations, and piping diagrams are filed as privileged and confidential not for public disclosure with the FERC. SWPPPs also identify material storage areas along and the type(s) of materials being stored which provides the opportunity for vandalism and or theft. While this is a security concern for all construction projects, which are more difficult to secure than completed industrial sites, it is of particular concern for linear construction projects where the construction activities are spread out over many miles, making it very difficult to secure from third party access.

A requirement to post online would also impose unnecessary financial burdens without a commensurate benefit. SWPPP documents often contain large data packages. Would the EPA maintain the storage facility for these documents? The uploading and/or downloading these large documents is difficult for internet users possessing lower
bandwidths. Applicants that do not have the technical capacity to store such documents on a public forum may experience financial hardship.

Moreover, the proposal would not serve its stated purpose to provide improved information and transparency. The SWPPP is a living document which is often revised to meet evolving project needs and to reflect current site activities. Posting an initial SWPPP would mean the information provided to the public would quickly go stale and potentially cause confusion. It is far more useful and informative for the updated SWPPP to be viewed on-site, rather than requiring applicants to post a stale, initial SWPPP on a website if the operator lacks resources to keep the online version refreshed.

However, there may be circumstances where an operator is able to devote resources to a website and may prefer to post SWPPP information (omitting any security sensitive information). AGA would support making this an option rather than a requirement. In IL, we are required to submit our SWPPP and NOI electronically. We understand at least one state has a website to which operators post SWPPP related documents. Some utilities may prefer this option to submitting hard copies as it can reduce the length of time that operators have to wait for their permits to be approved since the state deems the permits to be valid 30 days from the date the SWPPP or NOI are posted. If the utility were required to mail hard copies, the operators would have to add another week onto the review time. AGA recommends that to avoid security risks but allow for this method of expediting permits for infrastructure, EPA should allow an option to submit electronically to the agency, but take precautions such as CBI labeling to ensure that sensitive security information cannot be viewed by the public or obtained through FOIA or state disclosure programs.

B. Additional Comments on the Draft 2017 CGP and Appendices


In the 2012 CGP, EPA allowed an exception for maintaining a wide buffer for purposes of erosion and sediment control where the right-of-way width did not make that
“practicable.” This was an important provision that helped ensure adequate environmental protection while recognizing the uniquely temporary and linear nature of natural gas distribution pipeline projects.

In Part 2.2.1 of the Draft 2017 CGP on pages 8-9, EPA now proposes to require operators to “provide and maintain natural buffers and/or equivalent erosion and sediment controls when a water of the U.S. [WOTUS] is located within 50 feet of the site’s earth disturbances.” The draft CGP offers three compliance alternatives to provide a 50-foot undisturbed buffer or a combination of buffer area and supplemental erosion and sediment controls that provide “sediment load reduction equivalent” to a 50-foot undisturbed buffer.

EPA now proposes to make the following changes to the Erosion and Sediment Control exception for linear projects in Appendix G.2.2 (track change shows Draft 2017 CGA changes from 2012 version):

- **EPA’s Proposed Revisions to G.2.2:** “For ‘linear construction projects’ (see Appendix A)[defined to include “construction of ... pipelines ... in a long, narrow area”, page A-5], you are not required to comply with this requirement if site constraints (e.g., limited right-of-way) prevent you from complying with the requirements of the alternatives in Part 2.1.2.1a make it infeasible to implement one of the Part 2.2.1.a compliance alternatives, provided that, to the extent practicable feasible, you limit disturbances within 50 feet of any waters of the surface water U.S. and/or you provide supplemental erosion and sediment controls to treat stormwater discharges from earth disturbances within 50 feet of the surface water of the U.S. You must also document in your SWPPP your rationale for why it is infeasible for you to comply with the requirements in implement one of the Part 2.1.2.1a.2.2.1.a compliance alternatives, and describe any buffer width retained and/or supplemental erosion and sediment controls installed.”

AGA supports use of terms “feasible” and “linear construction site”: We appreciate EPA’s attempt to clarify the linear construction site exception from buffer controls. Given the definition of “infeasible” in Appendix A means “not technologically possible or not economically practicable and achievable in light of best industry practices” (page A-5), the
change from “practicable” to “feasible” should provide greater clarity. We also support the use of the term “Linear Construction Site” as defined in proposed Appendix A of the Draft 2017 CGA.

This clarification is particularly warranted, since it has become a common assumption with several state and local agencies that the best stream crossing method is by horizontal directional drill (HDD), regardless of the infeasibility and/or potential for other increased impacts on the environment, such as larger work spaces and increased construction schedules. We appreciate that EPA recognizes that environmental protection requires balancing of multiple potential impacts and objectives with technical and economic feasibility.

**AGA Opposes Changes in G.2.2 that Eliminate Flexibility for Linear Projects:** EPA proposes to make a small edit that would have a large, negative impact. You propose to drop the word “or” in the following requirement to:

“limit disturbances within 50 feet of [a regulated water body] and/or … provide supplemental erosion and/or sediment controls to treat stormwater discharges from earth disturbances within 50 feet of [a regulated water body]…”

If a utility “retains as much natural buffer as feasible” – in the words of EPA’s 2012 CGP FAQ - it should not be necessary to also provide supplemental erosion and sediment controls. Conversely, if the utility provides supplemental erosion and sediment controls, that should suffice. This is especially appropriate, given the fact that natural gas utility linear projects are also of very short duration and typically involve returning the site to its prior condition and vegetation. If there was pavement along the right-of-way, the utility replaces the pavement cut, but unlike some non-linear development projects, gas utility line projects do not change or expand the amount of permanent impervious surface. AGA urges EPA not to replace “and/or” with “and” in G.2.2. Instead, EPA should revise G.2.2. in the Draft 2017 CGA to provide:
**AGA’s Requested Text for G.2.2 (Retain Flexibility):** For “linear construction sites” (see Appendix A), you are not required to comply with this requirement if site constraints (e.g., limited right-of-way) make it infeasible to implement one of the Part 2.2.1.a compliance alternatives, provided that, to the extent feasible, you limit disturbances within 50 feet of any waters of the U.S. and/or you provide supplemental erosion and sediment controls to treat stormwater discharges from earth disturbances within 50 feet of the water of the U.S. You must also document in your SWPPP your rationale for why it is infeasible for you to implement one of the Part 2.2.1.a compliance alternatives, and describe any buffer width retained and/or supplemental erosion and sediment controls installed.

2. Notice of Intent Changes – CGP Appendix J

a. **AGA Opposes the Burdensome, Misleading NOI Question Regarding Post Construction Impervious Surface**

In Appendix J to the Draft 2017 CGA, EPA added a question in the revised Notice of Intent (NOI) asking for the “estimated percentage of impervious area that will remain on the site at the completion of construction.” For natural gas transmission and distribution projects, the question assumes there was no impervious surface at the site to begin with. But in fact, many linear distribution projects involve making and replacing pavement cuts in existing pavement. The projects do not result in any increase in impervious surface, and yet the data collected in this part of the NOI would falsely imply that linear gas distribution and transmission projects result in more impervious surface.

In addition, the proposed NOI question asks for estimated percentages of impervious surface after construction. Calculating the percentages of impervious area for a long, linear pipeline would require measuring every road crossing, driveway, playground, shed, etc. in miles of utility right-of-way. This is absurdly burdensome and does not provide any benefit as the right-of-way will be returned to the condition it had prior to construction. Calculation as a percentage is problematic, particularly for linear projects that may extend for hundreds
of miles. Additionally, for linear projects where the project proponent is not the landowner, the condition of the land use is under control of the landowner, who may change the land use between the time the company evaluates a location and months later when construction reaches a location.

**AGA Request:** AGA urges EPA either to drop this question (preferably), or at the very least, to modify the question to ask the operator to identify the area of new impervious surface (measured in acres or fractions of acres) added by the project – if any. EPA should not ask for percentages, as this would impose significant burdens without providing useful additional information.

**b. For Linear Construction, EPA Should Not Require Identifying All Stormwater Outfalls**

EPA proposes to add a requirement in the Appendix J NOI to report the exact latitude and longitude for all Stormwater outfalls at a site. This may work for non-linear projects, but it will certainly not work for natural gas linear projects. This proposed requirement to identify in advance all “outfalls” would not provide any beneficial information commensurate with the extremely onerous burdens this requirement would impose on natural gas linear construction activities, such as the construction or replacement of distribution or transmission pipelines across many miles of utility right-of-way. The agency asserts this is part of the SWPPP development, and thus assumes it would not add new burden for permittees. However, for linear construction, the list of outfalls could be very extensive. The CGP Definitions (Appendix A) define an Outfall as Discharge Point. Discharge Point is, “for the purposes of this permit, the location where collected and concentrated stormwater flows are discharged from the construction site.” This definition includes every single slope breaker that is designed to concentrate stormwater and discharge it off of the ROW (Construction site). For linear construction activities the exact location for each discharge point, or outfall, is based on performance standards for slope and soil conditions. These locations are determined in the field based on site conditions at the time of construction and may be significantly influenced
by the most recently constructed control. For this reason it is impossible to anticipate and identify all constructed discharge points, such as trench dewatering sites and outfalls of slope breakers. AGA urges EPA not to require identification of outfalls for linear construction sites – especially for linear energy projects such as natural gas distribution and transmission pipelines.

c. **AGA Urges EPA To Avoid Creating Security Risks and Unwarranted Delays for Energy Infrastructure**

Please see AGA’s response 7 in Part A of our comments regarding the information that AGA would not want released to the public because it is likely to be misunderstood by a layperson, could trigger unwarranted NIMBY activity, unfair scrutiny or unsubstantiated citizen complaints, and/or it could raise significant cyber or physical security concerns. We also suggest alternatives that could avoid these unnecessary burdens and security risks.

3. **CGP 1.4.2 Deadlines for Submitting NOI; Official Date of Permit Coverage**

The proposed language has been revised to state that: permit authorization will occur “14 calendar days after the EPA notifies you that it has received a complete NOI, unless EPA notifies you that your authorization has been delayed or denied.” Currently the permit states that: “You are considered covered under this permit 14 calendar days after EPA has acknowledged receipt of your NOI on the Agency’s website … unless EPA notifies you that your authorization has been delayed or denied.”

**AGA Recommendation – Clarify Time for Determining Completeness:** Please clarify the time period proposed for the completeness review. Without a guarantee of an expeditious completeness review, the applicant is left with uncertainty about how long it will be before the permit is valid.
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CGP 2.2.3.b Clarify Exception - Sediment Controls for Linear Construction Sites

In the Draft 2017 CGP, EPA proposes to revise the conditional exception for linear construction from the requirement for perimeter controls. EPA published a 2012 FAQ regarding this issue that provided significant clarification on how this requirement was to be implemented under the 2012 CGP (see https://www.epa.gov/npdes/stormwater-discharges-construction-activities#faq). The 2012 Fact Sheet provided some helpful explanation of these requirements for linear construction, as follows:

- “To clarify this requirement for the purpose of answering the question, Part 2.1.2.2.a only applies to perimeter areas of the construction site that receive stormwater from the earth-disturbing activity. If a portion of the construction site’s perimeter area does not receive stormwater from earth-disturbing activities, perimeter controls would not be required in that portion of the site.”
- “Additionally, if stormwater does flow from small earth-disturbing activities associated with linear utility projects (e.g., utility pole setting) to perimeter areas of the site, but due to the nature of the site and the existing practices in place, construction-related pollutants are prevented from reaching those perimeter areas (e.g., the minimal scope of the disturbance, the implementation of controls that keep the ground stabilized and avoid erosion and sedimentation, and the nature of the surrounding area), then the requirement to install sediment controls in the perimeter area as required in Part 2.1.2.2.a will be satisfied.”

Each of these statements in the 2012 Fact Sheet was followed up with examples.

The 2012 FAQ explanation is referenced in the Draft 2017 CGP’s FAQ. However, it would provide clearer guidance if this 2012 FAQ explanation were incorporated into the 2017 Fact Sheet, as EPA has done for Tracking Requirements for linear projects (see Draft 2017 Fact Sheet “Part 2.2.4: Minimize Sediment Track-Out – page 45).
AGA Recommendation: AGA requests EPA to incorporate the forgoing 2012 FAQ explanation into the 2017 Fact Sheet.

4. CGP 2.2.5 Stockpiles or land clearing debris piles management

Part 2.2.5 requires the operator to manage stockpiles or land clearing debris piles composed, in whole or in part, of sediment and/or soil:

a. Locate the piles outside of any natural buffers established under Part 2.2.1 and away from any stormwater conveyances, drain inlets, and areas where stormwater flow is concentrated;

AGA Recommendation for 2.2.5.a: In certain circumstances, workspace may be limited to minimize environmental impacts, due to site conditions (i.e., urban areas), or for safety concerns. For these projects, storing stockpiles within stormwater conveyances or where stormwater flow is concentrated may be the only option. We request Part 2.2.5.a be revised to read as follows:

In addition, CGP Part 2.2.5 would require the operator to manage stockpiles or land clearing debris piles composed, in whole or in part, of sediment and/or soil:

b. Surround piles with a sediment barrier;

c. Provide cover or appropriate temporary stabilization (consistent with the requirements of Part 2.2.14), and contain and securely protect from wind, for piles that will be unused for 14 or more days
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AGA Recommendation for Part 2.2.5.b and c.: We recommend that EPA clarify that these requirements do not apply to linear berms or to stockpiles associated with linear construction sites, such as natural gas transmission and distribution pipeline projects, where such controls are not practical. In addition, in Part A of our comments responding to EPA’s Request 3, we also oppose EPA’s proposal to change the timeframe for stabilization from 14 to 7 days.

5. Part 2.2.8 Topsoil preservation Should be Limited to 12 Inches; the Draft 2017 CPG Should Incorporate Federal Register Statement

Part 2.2.8 would require the operator to preserve native topsoil, unless infeasible, or where the intended function requires that the topsoil be disturbed or removed. The requirement for topsoil preservation should be limited to a maximum depth of 12 inches. This is consistent with the FERC requirements for interstate natural gas transmission pipeline construction and accomplishes the required objective.

Federal Register notice (69 Fed. Reg. at 21332, III.b.8) states that “Preserving topsoil is not required where the intended function of a specific area of the site dictates that the topsoil be disturbed or removed.” This is an important clarifying statement and should be incorporated into the Draft 2017 CGP and/or its Fact Sheet.

AGA Recommendation: Incorporate the above statement from the Federal Register Notice into the Draft 2017 CGP or its Fact Sheet.

6. Part 2.2.14.b.1 Final Stabilization Should be Based on Prior Natural Mix of Annual and Perennial Plants at the Site

In the Draft 2017 CGP, EPA proposes to change the requirements for the type of vegetative cover used in final stabilization. Proposed CGP Part 2.2.14.b.1 inadvertently creates confusion by requiring that vegetation “…provide a uniform…perennial cover with a density of 70 percent or more of the natural background cover”.

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By comparison, the 2012 CGP specifies that established uniform vegetation be provided “…which provides 70 percent or more of the density of coverage that was provided by vegetation prior to commencing earth-disturbing activities”.

The proposed change appears to set two new standards: 1) a new standard that would require one to consider what “natural” cover would have been at the location rather than what cover was existing just prior to the construction activity; and 2) the 70% new vegetative cover apparently would be required to be composed of perennial vegetation, not a combination of annual and perennial vegetation.

In the first new standard, it is unclear whether “natural cover” implies one should guess the percent and type of cover that might have been on site but for any past disturbance. The term is defined in Appendix A to mean “vegetation that occurs spontaneously without regular management, maintenance, or species introductions or removals, and that generally has a strong component of native species.” This could lead to a requirement to establish vegetative cover in excess of what was on the site prior to the disturbances from the construction project.

In the second new standard, it appears that an for area whose vegetation prior to disturbances from a construction project consisted of primarily annual vegetation, the operator would be required to replace the annuals with perennial vegetation. We note that there is no definition in Appendix A for the new term “perennial cover.”

For example, if the site had 100% vegetative coverage prior to construction disturbances (50% annual, 50% perennial), to achieve final stabilization, would the site have to have 70% vegetative coverage consisting of 100% perennial vegetation? This could result in extending the time period for achieving final stabilization and increase the costs of final stabilization. We suspect this was not EPA’s intent, but the new provision is confusing.
Finally, in urban and in some rural areas, the areas that are disturbed during construction activities are landscaped areas (e.g., lawns) and as a result do not contain Natural Vegetation. For these situations, this requirement needs to be revised to not require revegetating with Natural Vegetation.

**AGA Recommendation:** AGA recommends that EPA retain the original language from the 2012 CGP, or revise the Draft 2017 CGP to state:

“Vegetation must provide a uniform…vegetative cover with a density of 70 percent or more of the existing density of vegetative cover on the site immediately prior to construction. In undeveloped areas, the cover should contain a seed mix of Natural Vegetation”.

7. **CGP Part 2.2.14.b.iii - Stabilization Exceptions Should Include an Exception to Address Intended Function of Area**

AGA requests that this CGP provision should include EPA’s language from the Federal Register notice (69 Fed. Reg. at 21332, III.b.8) recognizing situations where “the intended function of a specific area dictates” that it remain “disturbed.” For example, for electric utility transmission lines, the pad on which a tower is erected needs to remain clear (e.g., for access and maintenance). For gas operations, there are occasionally small areas around above-ground facilities associated with a pipeline that require future access for operations and maintenance, such as “pig launchers” for inserting and retrieving robotic in-line inspection (ILI) devices.

**AGA Recommendation:** Part 2.2.14.b.iii of the CGP should be revised to add the following exception:

- **“Intended Function of Area:** In limited circumstances, installation of stabilization measures is not required to be completed within 14 days if the intended function of a specific area necessitates that it remain disturbed.”

8. **Part 4.4.1 – Allow Inspections to Cease in Areas Where Final Stabilization Criteria Have Been Achieved**

The proposed CGP Part 4.4.1 allows reduction of the inspection frequency to once per month when the *interim* stabilization criteria in Part 2.2.14.1a. have been completed in an area of the project site. Linear natural gas pipeline construction many times will complete
final stabilization on areas as the project progresses. Rather than requiring continued inspections of these areas once per month, the CGP should include a provision to allow inspections to cease in these areas. This could be implemented updating the onsite SWPPP to show the areas that have achieved final stabilization or could be implemented by EPA allowing partial permit coverage terminations of areas that have met the final stabilization criteria.

AGA requests that the proposed CGP include a provision to allow inspections to cease in covered areas at which the final stabilization criteria have been achieved. This could be implemented by updating the onsite SWPPP to show the areas that have achieved final stabilization. In the alternative, EPA could allow partial permit coverage terminations of areas that have met the final stabilization criteria.

9. **Part 7.2 – Recognize Some SWPPP Contents For Linear Energy Projects May Differ**

AGA requests that EPA add a general comment in CGP Part 7.2 recognizing that some SWPPP contents may need to be adjusted for linear energy projects to reflect the unique nature of these projects. For example, operators of linear natural gas and electric facilities need to limit the public availability of information about their facilities pursuant to state and federal security requirements, for example those imposed by state public utility commissions, FERC and the U.S. Department of Homeland Security. The CGP should not require any information to be provided to EPA that would be restricted by other state and federal laws and regulations from public disclosure unless that information can be adequately protected as Confidential Business Information (CBI) or otherwise so that it would not be subject to public disclosure pursuant to FOIA or other state or federal public information requests.

In addition, since linear projects generally are constructed from point A to point B, they are not shaped like “rectangular” traditional surface development projects. Thus NOI and SWPPP descriptions (e.g., total project area) would be more appropriately provided in the length (e.g., miles) of a project rather than in acres.
Accordingly, Part 7.2 should be revised as follows:

“7.2 SWPPP Contents

At a minimum, the SWPPP must include the information specified in this Part and as specified in other parts of this permit, except the SWPPP for linear construction sites and energy construction sites may be adjusted as needed, for example to prevent public disclosure of sensitive security information for critical energy infrastructure in conflict with state or federal laws or regulations prohibiting public disclosure of information, or to reflect the unique nature of linear construction sites.”

10. CGP Part 7.2.4 – Site Map for Energy Projects Should Not Result in Disclosure of Sensitive Security Information

For the reasons stated above, Part 7.2.4 should be revised as follows:

7.2.4 Site Map. Include a legible map, or series of maps, showing the following features at the site, except for critical energy infrastructure, no sensitive security information should be included in site maps that could be made available to the public…”

11. CGP Part 8.2.2 Clarify Conditions for Terminating CGP Coverage with Transfer of Site Control

AGA is concerned that EPA has described the conditions for termination of coverage when transferring the control of areas on the site to another operator so that the transfer would not be deemed complete (and the initial operator no longer responsible) until the operator receiving control over the areas being transferred had submitted an NOI and obtained coverage under the permit.
This can pose problems as the initial operator may not have any means to require the new operator to obtain coverage under the permit or the timing of obtaining the coverage. This could be especially problematic in situations in which a property transfer is being conducted.

**AGA Recommendation:** AGA requests that this requirement be revised to state the following:

“8.2.2. You have transferred control of all areas of the site for which you are responsible under this permit to another operator, and you have notified in writing the new operator of the need for that operator has submitted an NOI and obtained coverage under this permit; or”

AGA members are committed to providing safe, reliable, affordable energy service to their customer, while doing so in a manner that protects the environment. We would welcome the opportunity to discuss our comments with you to serve these goals. AGA appreciates the opportunity to comment.

Respectfully Submitted,

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