Coalition of Construction & Development Associations

September 17, 2026

Mr. Greg Schaner
Office of Wastewater Management
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue N.W.
Washington, DC 20460

Re: National Pollutant Discharge Elimination System (NPDES) 2027 Issuance of General Permit for Stormwater Discharges from Construction Activities; Docket ID No. EPA-HQ-OW-2025-0760

Dear Mr. Schaner:

On August 3, 2026, the U.S. Environmental Protection Agency (EPA) published a notice in the *Federal Register* requesting comments on its draft National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharges from Construction Activities (CGP).[1] In response, our coalition of "Construction and Development" Associations is pleased to submit the following comments on the Draft CGP for the record of this administrative proceeding. We represent an informal group of trade associations whose hundreds of thousands of members own, develop, improve and conduct construction operations on projects across the United States.

I. SUMMARY

Our coalition represents organizations and member firms that perform construction activities at project sites nationwide. When wet weather occurs, those jobsites may generate "stormwater associated with construction activity," as defined by the relevant federal regulations. Our members are, therefore, required to obtain and comply with NPDES permits on *nearly all* projects disturbing one or more acres of land (and smaller sites that are part of a larger common plan of development or sale). The manner in which federal and state NPDES permitting authorities craft and enforce permits directly affects our members. Although EPA's CGP directly applies in only a handful of states, US territories, District of Columbia, and lands of federal control, the EPA CGP serves as a national model for EPA-delegated state-issued CGPs and therefore has far-reaching implications.

Through the proposed 2027 CGP, EPA is requesting industry input on new CGP requirements, procedural terms/conditions, deadline changes, and reporting obligations that – *among other things* – would significantly impact construction operations and overall environmental management of all construction sites seeking coverage under EPA's 2027 CGP. Although coalition members have submitted separate comments to EPA regarding specific elements of the proposal, these joint comments specifically focus on two separate issues.

Most importantly, it is critical that EPA reauthorize the 2027 NPDES CGP prior to expiration of the 2022 NPDES CGP on February 17, 2027. This is particularly true for firms operating within EPA non-delegated

[1] 91 Fed. Reg. 48,862, 48,862–69 (Aug. 3, 2026).

CWA 402 states, US territories, District of Columbia, and lands of federal control where the federal CGP is the permit of record. In addition, coalition members believe the President's directive to streamline the NPDES CGP under Executive Order (E.O.) 14394, "Removing Regulatory Barriers to Affordable Home Construction" requires EPA undertake a separate rulemaking process that fully complies with both the Administrative Procedures Act (APA) and the Regulatory Flexibility Act (RFA) to solicit input on ways to further streamline the NPDES CGP permitting, recordkeeping, and monitoring requirements, particularly as they related to small businesses.[2]

II. CGP REAUTHORIZATION IS ESSENTIAL, ESPECIALLY FOR NON-DELEGATED STATES, US TERRITORIES, AND LANDS OF FEDERAL CONTROL

EPA's current CGP became effective on February 16, 2022, and will expire on February 16, 2027.[3] As EPA explains in the CGP Factsheet, NPDES regulations provide two options (e.g., individual, general permits) for obtaining required CWA 402 NPDES permit coverage to "discharge" a "pollutant" from active construction sites.[4] EPA estimates that approximately 13,000 construction site operators within the three (3) non-delegated states, District of Columbia, U.S. Territories, and lands of federal control will seek coverage under the proposed 2027 CGP during the permit's five-year authorization.[5]

However, members of this coalition rely upon the availability of EPA's NPDES CGP stormwater permit, rather than seeking coverage under the NPDES individual permit program. Therefore, it is imperative for EPA to reauthorize the proposed (2027) CGP prior to the permit's expiration on February 17, 2027.

III. EXECUTIVE ORDER 14394 COMPELS EPA TO UNDERTAKE A SEPARATE RULEMAKING THAT COMPLIES WITH THE ADMINISTRATIVE PROCEDURES ACT AND REGULATORY FLEXIBILITY ACT

Earlier this year, President Trump identified streamlining the NPDES CGP as a priority for EPA under E.O. 14394, "Removing Regulatory Barriers to Affordable Home Construction."[6] The President's E.O. called upon the EPA Administrator to review and revise federal stormwater permitting requirements under the NPDES CGP to reduce record keeping and reporting requirements to reduce overall permitting costs and streamline approvals for new construction activities.[7] Our organizations agree.

However, to accomplish the President's objectives for comprehensive permitting reform to the CGP under E.O. 14394, prior to the existing CGP permit's expiration date on February 17, 2027, EPA should

---

[2] Exec. Order No. 14,394, *Removing Regulatory Barriers to Affordable Home Construction*, 91 Fed. Reg. 13,207 (Mar. 18, 2026).

[3] U.S. Environmental Protection Agency. (2025). *National Pollutant Discharge Elimination System construction general permit for stormwater discharges from construction activities: 2022 CGP permit Parts 1–9 (as modified).* https://www.epa.gov/system/files/documents/2025-04/2022-cgp-permit-as-modified.pdf

[4] U.S. Environmental Protection Agency. (2026). *Fact sheet for the proposed 2027 Construction General Permit* (p. 6).

[5] U.S. Environmental Protection Agency. (2026). *Incremental cost impact analysis for the proposed 2027 Construction General Permit* (p. 1).

[6] Exec. Order No. 14,394, *Removing Regulatory Barriers to Affordable Home Construction*, 91 Fed. Reg. 13,207 (Mar. 18, 2026).

[7] The White House. (2026, March 13). *Fact sheet: President Donald J. Trump removes regulatory barriers to affordable home construction.* https://www.whitehouse.gov/fact-sheets/2026/03/fact-sheet-president-donald-j-trump-removes-regulatory-barriers-to-affordable-home-construction/

reauthorize the proposed 2027 CGP and then commit to a separate federal rulemaking process to solicit the public's input on boarder reforms to the reauthorized CGP permit.

As part of that subsequent EPA rulemaking, our organizations urge EPA to comply with the APA and the RFA amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) to ensure small entities can fully participate in this rulemaking process.[8,9,10] Our organizations note the vast majority of our collective membership meets the U.S. Small Business Administration's (SBA) definition of "small entity." Specifically, we urge EPA as part of this subsequent GCP rulemaking to either certify that the CGP does not impact a substantial number of small entities, or prepare an initial regulatory flexibility analysis (IRFA) to assess the impacts of the CGP's existing permitting requirements upon small entities and identify less burdensome options.[11] According to SBA's Office of Advocacy, to-date, EPA has never determined the CGP's effect on small entities. Further, the Agency has not prepared an IRFA as required under the RFA.[12]

If EPA were to prepare an IRFA for the CGP's requirements, our organizations believe that it would trigger the need to convene a small business advocacy review panel (SBAR) under the Small Business Regulatory Enforcement Fairness Act (SBREFA).[13] By convening an SBAR panel, EPA would provide small entities with the opportunity to identify additional permitting, recordkeeping, and reporting efficiencies under the CGP as directed by E.O. 14394. It would also comply with requirements under the RFA and SBREFA.

The subsequent rulemaking should consider a coordinated set of reforms rather than isolated changes to individual permit requirements. At a minimum, EPA should establish a process through which EPA and authorized states can recognize qualifying state, Tribal, and local erosion and sediment control programs, commonly referred to as "qualifying local programs", under 40 C.F.R. § 122.44(s). Compliance with an approved qualifying local program could then satisfy corresponding CGP requirements, reducing duplicative planning, inspections, recordkeeping, and corrective-action procedures while maintaining equivalent water-quality protections.[14] Other reforms could include removing unnecessary review periods for routine NOIs and administrative changes; maintaining continuous permit coverage when control of a site is transferred; adopting practical stabilization deadlines; eliminating duplicative reporting and documentation; and reconsidering nationwide turbidity monitoring and other requirements that do not fit the CGP's traditional site-specific, BMP-based approach.[15] Together, these reforms would focus federal oversight on activities posing meaningful environmental risks, recognize protections already provided by state and local programs, and reduce permitting delays and compliance costs.

---

[8] Administrative Procedure Act, 5 U.S.C. §§ 551–559.
[9] Regulatory Flexibility Act, 5 U.S.C. § 601.
[10] Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, tit. II, 110 Stat. 857.
[11] 5 U.S.C. § 604.
[12] U.S. Small Business Administration, Office of Advocacy. (2021, July 12). *Comments on EPA's proposed 2022 Construction General Permit.* https://advocacy.sba.gov/wp-content/uploads/2021/07/Office-of-Advocacy-Comment-Letter-on-CGP.pdf
[13] 5 U.S.C. § 609(b).
[14] 40 C.F.R. § 122.44(s) (2026); U.S. Environmental Protection Agency. (2008). *National Pollutant Discharge Elimination System general permit for stormwater discharges from construction activities: Final fact sheet* (p. 6). https://www.epa.gov/sites/default/files/2015-11/documents/cgp2008_finalfactsheet.pdf
[15] National Association of Home Builders. (2021, July 12). *Comments on EPA's proposed 2022 Construction General Permit for stormwater discharges from construction activities*. EPA Docket ID No. EPA-HQ-OW-2021-0169; National Association of Home Builders. (2026, September 17). *Comments on EPA's proposed 2027 Construction General Permit for stormwater discharges from construction activities*. EPA Docket ID No. EPA-HQ-OW-2025-0760.

IV. COURTS HAVE RULED THAT CWA GENERAL PERMITS INCLUDING THE NPDES CGP ARE "RULES" SUBJECT TO ADMINISTRATIVE PROCEDURES ACT AND REGULATORY FLEXIBILITY ACT

In *Nat'l Ass'n of Home Builders v. U.S. Army Corps of Engineers*[16] (hereinafter *NAHB v. Corps*), the D.C. Circuit Court of Appeals held that general permits are "rules" under the Administrative Procedure Act. In *NAHB v. Corps*, the Army Corps of Engineers argued that certain general permits issued under Clean Water Act section 404 were not "rules." The permits at issue in *NAHB v. Corps* were nationwide permits (NWPs) that established certain procedures and requirements that, if followed, allowed a person to discharge dredge or fill material. The Court held that

> [e]ach NWP *easily* fits within the APA's definition of "rule." This is so because each NWP, which authorizes a permittee to discharge dredged and fill material... is a legal prescription of general and prospective applicability which the Corps has issued to implement the permitting authority the Congress entrusted to it in section 404 of the CWA.[17]

The EPA's CGP is no different from the NWPs addressed in *NAHB v. Corps*. The NAHB court explained the Corps has authority to issue both general and individual permits under CWA section 404. The general permits at issue in *NAHB v. Corps*, nationwide permits, were "class-wide," with a limited (five-year) lifespan. Furthermore, the court explained that if a party discharged pollutants in violation of nationwide permit, or without obtaining an individual permit, that party could be subject to a criminal or civil enforcement action.

Similarly, the CGP is also a "general permit" because it applies in a number of states and numerous dischargers operate under it. It is "class wide" in that the EPA promulgated it to authorize stormwater discharges from construction sites, and it has a five-year life span. Finally, like the Corps' nationwide permits, a developer that discharges storm water in violation of the CGP (or without obtaining an individual permit) faces the possibility of criminal or civil penalties.

Thus, the D.C Circuit Court of Appeals has already held that CWA general permits are "rules" under the APA. The CGP is no different, and "*easily* fits within the APA's definition of 'rule.'"[18]

The RFA provides:

> Whenever an agency is required by section 553 of this title, or any other law, to publish general notice of proposed rulemaking for any proposed rule,... the agency shall prepare and make available for public comment an initial regulatory flexibility analysis. Such analysis shall describe the impact of the proposed rule on small entities. The initial regulatory flexibility analysis or a summary shall be published in the Federal Register at the time of the publication of general notice of proposed rulemaking for

[16] *National Association of Home Builders v. U.S. Army Corps of Engineers*, 417 F.3d 1272, 1284–85 (D.C. Cir. 2005).
[17] *Id.* at 1284 (emphasis added).
[18] *Id.*

> the rule. The agency shall transmit a copy of the initial regulatory flexibility analysis to the Chief Counsel for Advocacy of the Small Business Administration.[19]

Thus, when an agency proposes a rule it must prepare a regulatory flexibility analysis and make it available to the public for review. The EPA has failed to do so with respect to the CGP.

V. CONCLUSION

Thank you for the opportunity to provide these comments on EPA's proposed 2027 NPDES CGP. If you have any questions or need additional information, please contact Melinda Tomaino, senior director of environment and sustainability at the Associated General Contractors of America, at melinda.tomaino@agc.org or (703) 837-5415.

Respectfully,

American Road & Transportation Builders Association

Associated General Contractors of America

National Association of Home Builders

[19] 5 U.S.C. § 603(a).