



## Environmental Rules to Watch in 2016

In the last full year of the Obama Administration, AGC expects the U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) to take action on the following environmental rules/permits affecting the construction industry, including:

### **Electronic Reporting Requirements**

In Oct. 2015, EPA finalized a nationwide rule that will require construction site operators to submit their National Pollutant Discharge Elimination System (NPDES) stormwater permit documentation (e.g., application forms, termination forms, annual reports, and all monitoring results) to their permitting authorities using an electronic reporting tool, instead of filing paper. This environmental compliance data, along with government-administered inspection and enforcement results, will reside on an EPA server that feeds into a publicly-accessible website – EPA’s Enforcement and Compliance History Online (ECHO) database. In 2016 and beyond, the agency and state permitting authorities will begin to incorporate electronic reporting requirements into new permits.

- AGC Action: AGC submitted two rounds of comments, held face-to-face meetings with EPA staff, and organized a member webinar to discuss the e-Reporting proposal. The final rule reflects significant AGC input – providing important flexibility and key distinctions that recognize the large universe of transient construction operations each year. AGC will continue to engage with EPA to address the potential misinterpretation or misuse of construction site-specific information, as EPA enhances its EHCO database (see [AGC’s Environmental Observer article](#)).

### **Reissuance of EPA’s Construction General Permit (CGP)**

EPA has initiated the process of revising the federal CGP for stormwater discharges, which is due to expire in Feb. 2017 and serves as a model for the nation. In accordance with the NPDES e-Reporting rule, EPA plans to call for electronic reporting of all information that the CGP requires. Other notable changes under consideration include: public accessibility to stormwater plan information, either by posting on the Internet or by incorporating salient information into the application form; and project owner responsibility for the preparation and design of the SWPPP prior to putting a project out for bid.

- AGC Action: AGC has begun discussions with EPA regarding revisions to the federal CGP and will remain engaged throughout 2016. AGC supports provisions that would help to ensure fair and consistent bidding on environmental management (level-playing field); however, AGC has strong concerns regarding EPA’s apparent push to facilitate private citizen oversight and enforcement of construction projects.

### **“Sue & Settlement” for More Stormwater Rules**

In September 2015, the Ninth Circuit approved a settlement between EPA and environmentalists that requires EPA to propose by Dec. 17, 2015, revisions to its Clean Water Act (NPDES) general permit program for small MS4s (municipal separate storm sewer systems) to make cities more accountable for reducing stormwater pollution going to “Waters of the U.S.” This could force cities to further restrict runoff from construction sites and developed properties within their limits. Environmental groups have taken to the courts to pursue various strategies aimed at setting tighter limits on runoff from developed sites (e.g., retention standards and limits on impervious surface area); this follows EPA’s May 2014 announcement that it is no longer working on a national “post-construction” stormwater rule (see [AGC’s Environmental Observer article](#)).

- AGC Action: At the time of this writing, EPA has not proposed revisions to the permitting program. AGC plans to review and comment on the proposal in early 2016.

### **Waters of the United States (WOTUS) – Federal Jurisdiction and Permitting of Water, Wet Features**

EPA has posted a statement on its website concerning the litigation over the new WOTUS rule, acknowledging that the U.S. Court of Appeals for the Sixth Circuit has temporarily blocked EPA and the Corps from implementing the new rule, pending further action of the court. The statement confirms that the agencies are back to using the prior regulatory definition of WOTUS and applicable guidance (status quo as it existed before the new rule) in making jurisdictional determinations or taking other actions based on the definition of WOTUS. Despite this holding pattern, EPA and the

Corps have directed their staff to move ahead with measures to “improve” implementation of the national Clean Water Act (CWA) Section 404 permit program, as promised when the new rule was released. [Click here](#) for the full story.

- AGC Action: Alone and via coalitions, AGC submitted four sets of extensive comments on the agencies’ proposed rule. AGC succeeded in getting improvements to the rule and the association has been meeting with EPA and the Corps in an effort to influence its implementation. AGC also continues to work with its Congressional allies to require the agencies to revisit their rulemaking process. AGC is closely monitoring judicial, administrative, and legislative developments; [click here](#) for the latest report on this issue.

### ***Reissuance, Issuance of Nationwide Permits***

The Corps issues NWP’s to authorize specific categories of activities in “Waters of the U.S.” that have minimal individual and cumulative adverse environmental effects. Currently, there are 50 NWP’s that expire on March 18, 2017. The Corps expects to release draft NWP’s for public comment in February 2016 and may propose new NWP’s to authorize categories of activities that are not currently authorized by the existing program.

- AGC Action: AGC plans to review the general permit package and provide comment. [Click here](#) to see AGC’s article on the 2012 NWP’s, currently in effect.

### ***Lead Based Paint (LBP)***

In February 2016, EPA expects to finalize an AGC-supported rule that would allow contractors who are subject to EPA’s *current* Lead RRP Program (that applies to work in pre-1978 target housing and child-occupied facilities) to complete the required “renovator” re-certification process via distance/online learning, rather than traveling to a more expensive in-seat program. [Click here](#) for more information.

As previously reported, EPA has received approval to survey general contractors regarding their recent renovation, repair and painting (RRP) activities in public- and private-sector commercial buildings. Although EPA has not decided yet when/how it plans to distribute the survey, the agency is aiming to get back approximately 9,000 responses. Action on the survey may be seen in 2016. The [Contractor Questionnaire](#) solicits feedback on: the types of RRP activities performed in non-residential buildings; the amount of renovation jobs that have disturbed lead-painted surfaces; the “best management practices” that are being used on RRP jobs; and work practices specific to the containment and clean-up of the work area. Completion of the survey would be voluntary. If EPA determines such activities create a “hazard,” the agency will write rules applicable to building contractors.

### ***Air Quality Standards for Ozone***

EPA tightened the ozone National Ambient Air Quality Standards (NAAQS) to 70 parts per billion (ppb). State nonattainment recommendations are due in 2016. EPA will then finalize the nonattainment areas designations in 2017 with additional milestones and deadlines extending out to 2037.

- AGC Action: While AGC was not able to stop EPA from issuing the new standard, we were able to spare industry from a worst case-scenario and succeed in persuading the agency to be more moderate in its approach. EPA heeded AGC’s recommendations to grandfather certain construction permit applications, thereby allowing those applications to be reviewed under the current standard, and to better account for the impact of “background” ozone that either occurs naturally or is transported from other countries, as AGC’s in-depth article further explains. [Click here](#) for the full story.

### ***National Ambient Air Quality Standards; Treatment of Data Influenced by Exceptional Events***

EPA recently proposed changes to its “Exceptional Events Rule” (EER) that allows the agency to exclude certain air-quality monitoring data – associated with uncontrollable or unpreventable emissions – when determining whether or not an area violates a national air standard. EPA also released a draft version of guidance for states seeking to demonstrate that a wildfire event affected monitored ozone concentrations. This package of documents could be critical for states looking for all possible options to help them attain EPA’s recently tightened ozone NAAQS. EPA is accepting public comment on the EER proposal and draft guidance until Jan. 19 and expects to publish final documents in August 2016. [Click here](#) for more information.