

**BEFORE THE UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION**

)	
Tennessee Gas Pipeline Company, LLC)	Docket No. CP14-529-000
Connecticut Expansion Project)	
)	

**SANDISFIELD TAXPAYERS OPPOSING THE PIPELINE’S ANSWER
IN OPPOSITION TO THE REQUEST OF TENNESSEE GAS PIPELINE, LLC
FOR A PARTIAL NOTICE TO PROCEED**

Sandisfield Taxpayers Opposing the Pipeline (“STOP”), an intervenor in this proceeding (See Order Issuing Certificate, 154 FERC ¶ 61,191 (March 11, 2016) (“Order”) hereby submits this answer pursuant to 18 C.F.R. § 385.213(a)(3), in opposition to the request (“Request”) of Tennessee Gas Pipeline Company, L.L.C. (“TGP” or “Tennessee”) for a limited notice to proceed with tree felling (“NTP”) for the Connecticut Expansion Project (“Project” or “Pipeline”). STOP objects to Tennessee’s Request on all grounds available to it, including but not limited to:

I. The Commission is Without Authority to Issue the Partial Notice to Proceed at This Time

As STOP has repeatedly noted in these proceedings,¹ under the Clean Water Act (“CWA”),² Tennessee is required to secure certification from the Commonwealth of Massachusetts Department of Environmental Protection (“MassDEP”) that its activities will comply with all state water quality standards (“WQSs”),³ prior to commencing any such activities. As the Commission itself noted in the Order, “Tennessee will not be allowed to construct any

¹ See, e.g., Order at P. 102.

² 33 U.S.C. § 1251 *et seq.*

³ 33 U.S.C. § 1341(a)(1).

facilities on subject property unless and until there is a favorable outcome on all outstanding requests for necessary federal approvals, including a section 401 water quality certificate.”⁴ The United States Environmental Protection Agency (“EPA”) is the agency charged with overseeing the implementation of the CWA, and it has promulgated criteria⁵ for determining whether a new source⁶ has commenced construction. Specifically, construction of a new source has commenced if the owner or operator of said source has:

- “(i) Begun, or caused to begin as part of a continuous on-site construction program:
 - (A) Any placement, assembly, or installation of facilities or equipment; or
 - (B) *Significant site preparation work including clearing, excavation or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or*
- (ii) Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation with a reasonable time.”⁷

Tennessee’s Request asks the Commission to authorize tree felling, which it has repeatedly insisted is necessary for the overall construction of the Project.⁸ In other words, TGP seeks to begin clearing the sites on which it intends to complete construction within the calendar year. It seeks to do this notwithstanding the fact that the Commonwealth has not yet issued or waived a section 401 water quality certificate. Thus, if the Commission issues the requested Partial Notice, it will have authorized or permitted activities which are expressly defined by EPA as constituting

⁴ Order at P. 99.

⁵ See 40 C.F.R. § 122.29.

⁶ As defined at 40 C.F.R. § 122.2.

⁷ 40 C.F.R. § 122.29(b)(4) (emphasis added); see also EPA 2012 Construction General Permit (CGP), Appendix A-Definitions and Acronyms (attached hereto).

⁸ See, e.g., Office of Energy Projects, *Environmental Assessment for Tennessee Gas Pipeline Company, L.L.C.’s Connecticut Expansion Project under CP14-529* (“EA”), at 18, Figure 8 (depicting “the typical pipeline construction sequence,” in which clearing is step 2) (October 23, 2015).

commencing construction, *i.e.*, activities “which may result in [a] discharge to the navigable waters.”⁹ Accordingly, the Commission lacks the authority to issue the Requested Notice.

For further support for the proposition that Tennessee is prohibited from felling trees at this time, STOP refers the Commission to, and incorporates by reference the legal authorities cited in the attached January 14, 2016 opposition papers of the Office of the Attorney General of New York, filed with the Commission regarding the Constitution Pipeline Company, LLC’s Request for Partial Notice to Proceed and Cut Down Trees (FERC Docket No. CP13-499-000).

II. Tennessee’s Claims about Federal Permits are Misleading At Best

At the outset, Tennessee admits in its Request that it has not, in fact, obtained all of the federal authorizations which it requires in order to proceed.¹⁰ Despite this, it attempts to gloss over its lack of authorization by focusing on the authorizations it has received. For example, Tennessee states in its Request that it will not require a permit from the U.S. Army Corps of Engineers (“Corps”) under Section 404 of the CWA¹¹ for its proposed tree clearing activities. Under normal circumstances, tree clearing with hand-held equipment during March and April might not “rut soil or cause damage to the root systems.”¹² However, this premise assumes that the ground will be frozen during the times allotted. Tennessee ignores the fact that this past winter has been anything but “usual.”¹³ Even assuming, *arguendo*, its statement is accurate, and it will not require a 404

⁹ 33 U.S.C. § 1341(a)(1).

¹⁰ Request, at 1 (“Tennessee... will submit any federal authorizations that have not yet been received in future supplemental filings...”).

¹¹ 33 U.S.C. § 1344

¹² Request, at 1.

¹³ *See, e.g.*, Jason Samenow, “America’s year without a winter: The 2015-2016 season was the warmest on record,” *The Washington Post* (March 8, 2016), available at <https://www.washingtonpost.com/news/capital-weather-gang/wp/2016/03/08/americas-year-without-a-winter-the-2015-2016-season-was-the-warmest-on-record/> (last accessed March 25, 2016); NOAA National Centers for Environmental Information, *State of the Climate: National*

permit, TGP ignores the fact that tree clearing is part and parcel of pipeline construction activities.¹⁴ The Project will therefore require coverage under, *inter alia*, “a National Pollutant Discharge Elimination System (NPDES) Construction General Permit (CGP) from the United States Environmental Protection Agency (EPA).”¹⁵ Similarly, TGP blithely assumes that the U.S. Fish and Wildlife Service (“USFWS”) New England Field Office and the USFWS New York Field Office will grant its request for an extension of the tree-clearing window from March 31, 2016 to May 1, 2016. The USFWS tree-clearing window has been implemented for important reasons under the Endangered Species Act, and an extension is by no means certain.

CONCLUSION

For the foregoing reasons, Sandisfield Taxpayers Opposing the Pipeline respectfully requests that the Commission DENY the Request of Tennessee Gas Pipeline Company, L.L.C. for a Partial Notice to Proceed with Tree Felling.

Respectfully submitted,



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Overview for February 2016, published online March 2016, retrieved on March 25, 2016 from <http://www.ncdc.noaa.gov/sotc/national/201602>.

¹⁴ *Supra* Note 8 and associated text.

¹⁵ Certificate of the [Massachusetts] Secretary of Energy and Environmental Affairs on the Final Environmental Impact Report, at 5 (April 17, 2014). *See also* Order at PP. 85-86 (noting that state and local regulatory authorities may impose their own reasonable procedures and/or requirements).

Appendix A - Definitions and Acronyms

Definitions

"Action Area" – all areas to be affected directly or indirectly by the federal action and not merely the immediate area involved in the action. See 50 CFR 402. For the purposes of this permit and for application of the Endangered Species Act requirements, the following areas are included in the definition of action area:

- The areas on the construction site where stormwater discharges originate and flow toward the point of discharge into the receiving waters (including areas where excavation, site development, or other ground disturbance activities occur) and the immediate vicinity. (Example: Where bald eagles nest in a tree that is on or bordering a construction site and could be disturbed by the construction activity or where grading causes stormwater to flow into a small wetland or other habitat that is on the site that contains listed species.)
- The areas where stormwater discharges flow from the construction site to the point of discharge into receiving waters. (Example: Where stormwater flows into a ditch, swale, or gully that leads to receiving waters and where listed species (such as listed amphibians) are found in the ditch, swale, or gully.)
- The areas where stormwater from construction activities discharge into receiving waters and the areas in the immediate vicinity of the point of discharge. (Example: Where stormwater from construction activities discharges into a stream segment that is known to harbor listed aquatic species.)
- The areas where stormwater controls will be constructed and operated, including any areas where stormwater flows to and from the stormwater controls. (Example: Where a stormwater retention pond would be built.)
- The areas upstream and/or downstream from the stormwater discharge into a stream segment that may be affected by these discharges. (Example: Where sediment discharged to a receiving stream settles downstream and impacts a breeding area of a listed aquatic species.)

"Agricultural Land" - cropland, grassland, rangeland, pasture, and other agricultural land, on which agricultural and forest-related products or livestock are produced and resource concerns may be addressed. Agricultural lands include cropped woodland, marshes, incidental areas included in the agricultural operation, and other types of agricultural land used for the production of livestock.

"Antidegradation Policy" or "Antidegradation Requirements" - the water quality standards regulation that requires States and Tribes to establish a three-tiered antidegradation program:

1. Tier 1 maintains and protects existing uses and water quality conditions necessary to support such uses. An existing use can be established by demonstrating that fishing, swimming, or other uses have actually occurred since November 28, 1975, or that the water quality is suitable to allow such uses to occur. Where an existing use is established, it must be protected even if it is not listed in the water quality standards as a designated use. Tier 1 requirements are applicable to all surface waters.
2. Tier 2 maintains and protects "high quality" waters -- water bodies where existing conditions are better than necessary to support CWA § 101(a)(2) "fishable/swimmable"

uses. Water quality can be lowered in such waters. However, State and Tribal Tier 2 programs identify procedures that must be followed and questions that must be answered before a reduction in water quality can be allowed. In no case may water quality be lowered to a level which would interfere with existing or designated uses.

3. Tier 3 maintains and protects water quality in outstanding national resource waters (ONRWs). Except for certain temporary changes, water quality cannot be lowered in such waters. ONRWs generally include the highest quality waters of the United States. However, the ONRW classification also offers special protection for waters of exceptional ecological significance, i.e., those which are important, unique, or sensitive ecologically. Decisions regarding which water bodies qualify to be ONRWs are made by States and authorized Indian Tribes.

“Arid Areas” – areas with an average annual rainfall of 0 to 10 inches.

“Bank” (e.g., stream bank or river bank) – the rising ground bordering the channel of a water of the U.S.

“Bluff” – a steep headland, promontory, riverbank, or cliff.

“Borrow Areas” – the areas where materials are dug for use as fill, either onsite or off-site.

“Bypass” – the intentional diversion of waste streams from any portion of a treatment facility. See 40 CFR 122.41(m)(1)(i).

“Cationic Treatment Chemical” – polymers, flocculants, or other chemicals that contain an overall positive charge. Among other things, they are used to reduce turbidity in stormwater discharges by chemically bonding to the overall negative charge of suspended silts and other soil materials and causing them to bind together and settle out. Common examples of cationic treatment chemicals are chitosan and cationic PAM.

“Commencement of Earth-Disturbing Activities” - the initial disturbance of soils (or ‘breaking ground’) associated with clearing, grading, or excavating activities or other construction-related activities (e.g., stockpiling of fill material).

“Commencement of Pollutant-Generating Activities” – at construction sites (for the purposes of this permit) occurs in any of the following circumstances:

- Clearing, grubbing, grading, and excavation has begun;
- Raw materials related to your construction activity, such as building materials or products, landscape materials, fertilizers, pesticides, herbicides, detergents, fuels, oils, or other chemicals have been placed at your site;
- Use of authorized non-stormwater for washout activities, or dewatering activities, have begun; or
- Any other activity has begun that causes the generation of or the potential generation of pollutants.

“Construction Activities” – earth-disturbing activities, such as the clearing, grading, and excavation of land.

“Construction and Development Effluent Limitations and New Source Performance Standards” (C&D Rule) – as published in 40 CFR § 450 is the regulation requiring effluent limitations guidelines

(ELG's) and new source performance standards (NSPS) for controlling the discharge of pollutants from construction sites.

"Construction Site" – the land or water area where construction activities will occur and where stormwater controls will be installed and maintained. The construction site includes construction support activities, which may be located at a different part of the property from where the primary construction activity will take place, or on a different piece of property altogether. The construction site is often a smaller subset of the lot or parcel within which the project is taking place.

"Construction Support Activities" – a construction-related activity that specifically supports the construction activity and involves earth disturbance or pollutant-generating activities of its own, and can include activities associated with concrete or asphalt batch plants, equipment staging yards, materials storage areas, excavated material disposal areas, and borrow areas.

"Construction Waste" – discarded material (such as packaging materials, scrap construction materials, masonry products, timber, steel, pipe, and electrical cuttings, plastics, and styrofoam).

"Conveyance Channel" – a temporary or permanent waterway designed and installed to safely convey stormwater flow within and out of a construction site.

"Corrective Action" – for the purposes of the permit, any action taken to (1) repair, modify, or replace any stormwater control used at the site; (2) clean up and dispose of spills, releases, or other deposits found on the site; and (3) remedy a permit violation.

"Critical Habitat" – as defined in the Endangered Species Act at 16 U.S.C. 1531 for a threatened or endangered species, (i) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of section 4 of the Endangered Species Act, on which are found those physical or biological features essential to the conservation of the species and which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of the Endangered Species Act, upon a determination by the Secretary that such areas are essential for the conservation of the species.

"CWA" – the Clean Water Act or the Federal Water Pollution Control Act, 33 U.S.C. section 1251 et seq.

"Dewatering" – the act of draining rainwater and/or groundwater from building foundations, vaults, and trenches.

"Discharge" – when used without qualification, means the "discharge of a pollutant."

"Discharge of a Pollutant" – any addition of any "pollutant" or combination of pollutants to "waters of the United States" from any "point source," or any addition of any pollutant or combination of pollutants to the waters of the "contiguous zone" or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation. This includes additions of pollutants into waters of the United States from: surface runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. See 40 CFR 122.2.

"Discharge Point" – for the purposes of this permit, the location where collected and concentrated stormwater flows are discharged from the construction site.

“Discharge-Related Activity” – activities that cause, contribute to, or result in stormwater and allowable non-stormwater point source discharges, and measures such as the siting, construction, and operation of stormwater controls to control, reduce, or prevent pollutants from being discharged.

“Discharge to an Impaired Water” – for the purposes of this permit, a discharge to an impaired water occurs if the first water of the U.S. to which you discharge is identified by a State, Tribe, or EPA pursuant to Section 303(d) of the Clean Water Act as not meeting an applicable water quality standard, or is included in an EPA-approved or established total maximum daily load (TMDL). For discharges that enter a storm sewer system prior to discharge, the water of the U.S. to which you discharge is the first water of the U.S. that receives the stormwater discharge from the storm sewer system.

“Domestic Waste” – for the purposes of this permit, typical household trash, garbage or rubbish items generated by construction activities.

“Drainageway” – an open linear depression, whether constructed or natural, that functions for the collection and drainage of surface water.

“Drought-Stricken Area” – for the purposes of this permit, an area in which the National Oceanic and Atmospheric Administration’s U.S. Seasonal Drought Outlook indicates for the period during which the construction will occur that any of the following conditions are likely: (1) “Drought to persist or intensify”, (2) “Drought ongoing, some improvement”, (3) “Drought likely to improve, impacts ease”, or (4) “Drought development likely”. See http://www.cpc.ncep.noaa.gov/products/expert_assessment/season_drought.gif.

“Earth-Disturbing Activity” or “Land-Disturbing Activity” – actions taken to alter the existing vegetation and/or underlying soil of a site, such as clearing, grading, site preparation (e.g., excavating, cutting, and filling), soil compaction, and movement and stockpiling of top soils.

“Effective Operating Condition” – for the purposes of this permit, a stormwater control is kept in effective operating condition if it has been implemented and maintained in such a manner that it is working as designed to minimize pollutant discharges.

“Effluent Limitations” – for the purposes of this permit, any of the Part 2 or Part 3 requirements.

“Effluent Limitations Guideline” (ELG) – defined in 40 CFR § 122.2 as a regulation published by the Administrator under section 304(b) of CWA to adopt or revise effluent limitations.

“Electronic Notice of Intent” (eNOI) – EPA’s online system for submitting electronic Construction General Permit forms.

“Eligible” – for the purposes of this permit, refers to stormwater and allowable non-stormwater discharges that are authorized for coverage under this general permit.

“Emergency-Related Project” – a project initiated in response to a public emergency (e.g., natural disaster, disruption in essential public services), for which the related work requires immediate authorization to avoid imminent endangerment to human health or the environment, or to reestablish essential public services.

“Endangered Species” – defined in the Endangered Species Act at 16 U.S.C. 1531 as any species which is in danger of extinction throughout all or a significant portion of its range other than a species of the Class Insecta determined by the Secretary to constitute a pest whose

protection under the provisions of this Act would present an overwhelming and overriding risk to man.

“Excursion” – a measured value that exceeds a specified limit.

“Existing Project” – a construction project that commenced construction activities prior to February 16, 2012 (April 9, 2012 for the State of Idaho, except for Indian Country; April 13, 2012 for areas in the state of Washington, except for Indian Country, subject to construction activity by a Federal Operator; May 9, 2012 for projects in the following areas: the Fond du Lac Band and Grand Portage Band of Lake Superior Chippewa in Minnesota; and the Bad River Band and Lac du Flambeau Band of Lake Superior Chippewa in Wisconsin).

“Exit Points” – any points of egress from the construction site to be used by vehicles and equipment during construction activities.

“Exposed Soils” – for the purposes of this permit, soils that as a result of earth-disturbing activities are left open to the elements.

“Federal Operator” – an entity that meets the definition of “Operator” in this permit and is either any department, agency or instrumentality of the executive, legislative, and judicial branches of the Federal government of the United States, or another entity, such as a private contractor, performing construction activity for any such department, agency, or instrumentality.

“Final Stabilization” – on areas not covered by permanent structures, either (1) vegetation has been established, or for arid or semi-arid areas, will be established that provides a uniform (e.g., evenly distributed, without large bare areas) perennial vegetative cover with a density of 70 percent of the natural background vegetative cover, or (2) non-vegetative stabilization methods have been implemented to provide effective cover for exposed portions of the site.

“Hazardous Materials” or “Hazardous Substances” or “Hazardous or Toxic Waste” – for the purposes of this permit, any liquid, solid, or contained gas that contain properties that are dangerous or potentially harmful to human health or the environment. See also 40 CFR §261.2.

“Historic Property” – as defined in the National Historic Preservation Act regulations means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria.

“Impaired Water” or “Water Quality Impaired Water” or “Water Quality Limited Segment” – for the purposes of this permit, waters identified as impaired on the CWA Section 303(d) list, or waters with an EPA-approved or established TMDL. Your construction site will be considered to discharge to an impaired water if the first water of the U.S. to which you discharge is identified by a state, tribe, or EPA pursuant to Section 303(d) of the CWA as not meeting an applicable water quality standard, or is included in an EPA-approved or established total maximum daily load (TMDL). For discharges that enter a storm sewer system prior to discharge, the first water of the U.S. to which you discharge is the waterbody that receives the stormwater discharge from the storm sewer system.

“Impervious Surface” – for the purpose of this permit, any land surface with a low or no capacity for soil infiltration including, but not limited to, pavement, sidewalks, parking areas and driveways, packed gravel or soil, or rooftops.

“Indian Country” or “Indian Country Lands” – defined at 40 CFR §122.2 as:

1. All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation;
2. All dependent Indian communities with the borders of the United States whether within the originally or subsequently acquired territory thereof, and whether within or without the limits of a state; and
3. All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-ways running through the same.

“Infeasible” – for the purpose of this permit, infeasible means not technologically possible or not economically practicable and achievable in light of best industry practices. EPA notes that it does not intend for any permit requirement to conflict with state water rights law.

“Install” or “Installation” – when used in connection with stormwater controls, to connect or set in position stormwater controls to make them operational.

“Intermittent (or Seasonal) Stream” – one which flows at certain times of the year when groundwater provides water for stream flow, as well as during and immediately after some precipitation events or snowmelt.

“Jar test” – a test designed to simulate full-scale coagulation/flocculation/sedimentation water treatment processes by taking into account the possible conditions.

“Landward” – positioned or located away from a waterbody, and towards the land.

“Level Spreader” – a temporary stormwater control used to spread stormwater flow uniformly over the ground surface as sheet flow to prevent concentrated, erosive flows from occurring.

“Linear Project” – includes the construction of roads, bridges, conduits, substructures, pipelines, sewer lines, towers, poles, cables, wires, connectors, switching, regulating and transforming equipment and associated ancillary facilities in a long, narrow area.

“Minimize” – to reduce and/or eliminate to the extent achievable using stormwater controls that are technologically available and economically practicable and achievable in light of best industry practices.

“Municipal Separate Storm Sewer System” or “MS4” – defined at 40 CFR §122.26(b)(8) as a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains):

1. Owned and operated by a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States;
2. Designed or used for collecting or conveying stormwater;
3. Which is not a combined sewer; and

4. Which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR §122.2.

“National Pollutant Discharge Elimination System” (NPDES) – defined at 40 CFR §122.2 as the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under sections 307, 402, 318, and 405 of CWA. The term includes an ‘approved program.’

“Native Topsoil” – the uppermost layer of naturally occurring soil for a particular area, and is often rich in organic matter, biological activity, and nutrients.

“Native Vegetation” – the species of plants that have developed for a particular region or ecosystem and are considered endemic to that region or ecosystem.

“Natural Buffer” – for the purposes of this permit, an area of undisturbed natural cover surrounding surface waters within which construction activities are restricted. Natural cover includes the vegetation, exposed rock, or barren ground that exists prior to commencement of earth-disturbing activities.

“Natural Vegetation” – vegetation that occurs spontaneously without regular management, maintenance or species introductions, removals, and that generally has a strong component of native species.

“New Operator of a New or Existing Project” – an operator that through transfer of ownership and/or operation replaces the operator of an already permitted construction project.

“New Project” – a construction project that commences construction activities on or after February 16 (or on or after April 9, 2012 for the State of Idaho, except for Indian Country; April 13, 2012 for areas in the state of Washington, except for Indian Country, subject to construction activity by a Federal Operator; May 9, 2012 for projects in the following areas: the Fond du Lac Band and Grand Portage Band of Lake Superior Chippewa in Minnesota; and the Bad River Band and Lac du Flambeau Band of Lake Superior Chippewa in Wisconsin).

“New Source” – for the purpose of this permit, a construction project that commenced construction activities after February 1, 2010.

“New Source Performance Standards (NSPS)” – for the purposes of this permit, NSPS are technology-based standards that apply to construction sites that are new sources under 40 CFR 450.24.

“Non-Stormwater Discharges” – discharges that do not originate from storm events. They can include, but are not limited to, discharges of process water, air conditioner condensate, non-contact cooling water, vehicle wash water, sanitary wastes, concrete washout water, paint wash water, irrigation water, or pipe testing water.

“Non-Turbid” – a discharge that does not cause or contribute to an exceedence of turbidity-related water quality standards.

“Notice of Intent” (NOI) – the form (electronic or paper) required for authorization of coverage under the Construction General Permit.

“Notice of Termination” (NOT) – the form (electronic or paper) required for terminating coverage under the Construction General Permit.

“Operational” – for the purpose of this permit, stormwater controls are made “operational” when they have been installed and implemented, are functioning as designed, and are properly maintained.

“Operator” – for the purpose of this permit and in the context of stormwater discharges associated with construction activity, any party associated with a construction project that meets either of the following two criteria:

1. The party has operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications; or
2. The party has day-to-day operational control of those activities at a project that are necessary to ensure compliance with the permit conditions (e.g., they are authorized to direct workers at a site to carry out activities required by the permit).

This definition is provided to inform permittees of EPA's interpretation of how the regulatory definitions of “owner or operator” and “facility or activity” are applied to discharges of stormwater associated with construction activity.

“Ordinary High Water Mark” – the line on the shore established by fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, and/or the presence of litter and debris.

“Outfall” – see “Discharge Point.”

“Permitting Authority” – for the purposes of this permit, EPA, a Regional Administrator of EPA, or an authorized representative.

“Point(s) of Discharge” – see “Discharge Point.”

“Point Source” – any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural stormwater runoff.

“Pollutant” – defined at 40 CFR §122.2. A partial listing from this definition includes: dredged spoil, solid waste, sewage, garbage, sewage sludge, chemical wastes, biological materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial or municipal waste.

“Pollutant-Generating Activities” – at construction sites (for the purposes of this permit), those activities that lead to or could lead to the generation of pollutants, either as a result of earth-disturbance or a related support activity. Some of the types of pollutants that are typically found at construction sites are:

- sediment;
- nutrients;
- heavy metals;
- pesticides and herbicides;
- oil and grease;
- bacteria and viruses;

- trash, debris, and solids;
- treatment polymers; and
- any other toxic chemicals.

“Pollution Prevention Measures” – stormwater controls designed to reduce or eliminate the addition of pollutants to construction site discharges through analysis of pollutant sources, implementation of proper handling/disposal practices, employee education, and other actions.

“Polymers” – for the purposes of this permit, coagulants and flocculants used to control erosion on soil or to enhance the sediment removal capabilities of sediment traps or basins. Common construction site polymers include polyacrylamide (PAM), chitosan, alum, polyaluminum chloride, and gypsum.

“Prohibited Discharges” – discharges that are not allowed under this permit, including:

1. Wastewater from washout of concrete;
2. Wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds and other construction materials;
3. Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance;
4. Soaps or solvents used in vehicle and equipment washing;
5. Toxic or hazardous substances from a spill or other release; and
6. Waste, garbage, floatable debris, construction debris, and sanitary waste from pollutant-generating activities.

“Provisionally Covered Under this Permit” – for the purposes of this permit, EPA provides temporary coverage under this permit for emergency-related projects prior to receipt of a complete and accurate NOI. Discharges from earth-disturbing activities associated with the emergency-related projects are subject to the terms and conditions of the permit during the period of temporary coverage.

“Receiving Water” – a “Water of the United States” as defined in 40 CFR § 122.2 into which the regulated stormwater discharges.

“Run-On” – sources of stormwater that drain from land located upslope or upstream from the regulated site in question.

“Semi-Arid Areas” – areas with an average annual rainfall of 10 to 20 inches.

“Site” – for construction activities, the land or water area where earth-disturbing activities take place, including construction support activities.

“Small Construction Activity” – defined at 40 CFR § 122.26(b)(15) and incorporated here by reference. A small construction activity includes clearing, grading, and excavating resulting in a land disturbance that will disturb equal to or greater than one (1) acre and less than five (5) acres of land or will disturb less than one (1) acre of total land area but is part of a larger common plan of development or sale that will ultimately disturb equal to or greater than one (1) acre and less than five (5) acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the site.

“Small Residential Lot” – for the purpose of this permit, a lot being developed for residential purposes that will disturb less than 1 acre of land, but is part of a larger residential project that will ultimately disturb greater than or equal to 1 acre.

“Snowmelt” – the conversion of snow into overland stormwater and groundwater flow as a result of warmer temperatures.

“Spill” – for the purpose of this permit, the release of a hazardous or toxic substance from its container or containment.

“Stabilization” – the use of vegetative and/or non-vegetative cover to prevent erosion and sediment loss in areas exposed through the construction process.

“Steep Slopes” – where a state, Tribe, local government, or industry technical manual (e.g., stormwater BMP manual) has defined what is to be considered a “steep slope”, this permit’s definition automatically adopts that definition. Where no such definition exists, steep slopes are automatically defined as those that are 15 percent or greater in grade.

“Storm Sewer System” – a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains) designed or used for collecting or conveying stormwater.

“Stormwater” – stormwater runoff, snow melt runoff, and surface runoff and drainage.

“Stormwater Control Measure” - refers to any stormwater control, BMP, or other method (including narrative effluent limitations) used to prevent or reduce the discharge of pollutants to waters of the United States.

“Stormwater Controls” – see “Stormwater Control measure.”

“Stormwater Discharge Associated with Construction Activity” – as used in this permit, a discharge of pollutants in stormwater to waters of the United States from areas where land-disturbing activities (e.g., clearing, grading, or excavation) occur, or where construction materials or equipment storage or maintenance (e.g., fill piles, borrow area, concrete truck chute washdown, fueling), or other industrial stormwater directly related to the construction process (e.g., concrete or asphalt batch plants), are located.

“Stormwater Inlet” – a structure placed below grade to conduct water used to collect stormwater runoff for conveyance purposes.

“Stormwater Team” – the group of individuals responsible for oversight of the development and modifications of the SWPPP, and oversight of compliance with the permit requirements. The individuals on the “Stormwater Team” must be identified in the SWPPP.

“Storm Event” – a precipitation event that results in a measurable amount of precipitation.

“Storm Sewer” – a system of pipes (separate from sanitary sewers) that carries stormwater runoff from buildings and land surfaces.

“Subcontractor” – for the purposes of this permit, an individual or company that takes a portion of a contract from the general contractor or from another subcontractor.

“Surface Water” – a “Water of the United States” as defined in 40 CFR § 122.2.

“SWPPP” (Stormwater Pollution Prevention Plan) – a site-specific, written document that, among other things: (1) identifies potential sources of stormwater pollution at the construction site; (2) describes stormwater control measures to reduce or eliminate pollutants in stormwater discharges from the construction site; and (3) identifies procedures the operator will implement to comply with the terms and conditions of this general permit.

“Temporary Stabilization” – a condition where exposed soils or disturbed areas are provided a temporary vegetative and/or non-vegetative protective cover to prevent erosion and sediment loss. Temporary stabilization may include temporary seeding, geotextiles, mulches, and other techniques to reduce or eliminate erosion until either final stabilization can be achieved or until further construction activities take place to re-disturb this area.

“Thawing Conditions” – for the purposes of this permit, thawing conditions are expected based on the historical likelihood of two or more days with daytime temperatures greater than 32°F. This date can be determined by looking at historical weather data. Note: the estimation of thawing conditions is for planning purposes only. During construction the permittee will be required to conduct site inspections based upon actual conditions (i.e., if thawing conditions occur sooner than expected, the permittee will be required to conduct inspections at the regular frequency).

“Threatened Species” – defined in the Endangered Species Act at 16 U.S.C. 1531 as any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

“Tier 2 Waters” – for antidegradation purposes, pursuant to 40 CFR 131.12(a)(2), those waters that are characterized as having water quality that exceeds the levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water.

“Tier 2.5 Waters” – for antidegradation purposes, those waters designated by States or Tribes as requiring a level of protection equal to and above that given to Tier 2 waters, but less than that given Tier 3 waters. Some States have special requirements for these waters.

“Tier 3 Waters” – for antidegradation purposes, pursuant to 40 CFR 131.12(a)(3), Tier 3 waters are identified by states as having high quality waters constituting an Outstanding Natural Resource Water (ONRW), such as waters of National Parks and State Parks, wildlife refuges, and waters of exceptional recreational or ecological significance.

“Total Maximum Daily Load” or “TMDL” – the sum of the individual wasteload allocations (WLAs) for point sources and load allocations (LAs) for nonpoint sources and natural background. If receiving water has only one point source discharger, the TMDL is the sum of that point source WLA plus the LAs for any nonpoint sources of pollution and natural background sources, tributaries, or adjacent segments. TMDLs can be expressed in terms of either mass per time, toxicity, or other appropriate measure.

“Toxic Waste” – see “Hazardous Materials.”

“Turbidity” – a condition of water quality characterized by the presence of suspended solids and/or organic material.

“Uncontaminated Discharge” – a discharge that does not cause or contribute to an exceedence of applicable water quality standards.

“Upland” - the dry land area above and 'landward' of the ordinary high water mark.

“Upset” – Upset means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond your reasonable control. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation. See 40 CFR 122.41 (n)(1).

“Water-Dependent Structures” – structures or facilities that are required to be located directly adjacent to a waterbody or wetland, such as a marina, pier, boat ramp, etc.

“Water Quality Standards” – defined in 40 CFR § 131.3, and are provisions of State or Federal law which consist of a designated use or uses for the waters of the United States, water quality criteria for such waters based upon such uses, and an antidegradation policy to protect high-quality waters. Water quality standards protect the public health or welfare, enhance the quality of water and serve the purposes of the Act.

“Waters of the United States” – defined at 40 CFR §122.2 as:

1. All waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
2. All interstate waters, including interstate wetlands;
3. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:
 - a. Which are or could be used by interstate or foreign travelers for recreational or other purposes;
 - b. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
 - c. Which are used or could be used or could be used for industrial purposes by industries in interstate commerce;
4. All impoundments of waters otherwise defined as waters of the United States under this definition;
5. Tributaries of waters identified in paragraphs (1) through (4) of this definition;
6. The territorial sea; and
7. Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (1) through (6) of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 CFR 423.11 (m) which also meet the criteria of this definition) are not waters of the United States. This exclusion applies only to manmade bodies of water which neither were originally created in waters of the United States (such as disposal area in wetlands) nor resulted from the impoundment of waters of the United States. Waters of the United States do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

In applying this definition, EPA will consider applicable Court cases and current guidance.

“Wetland” – those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. On-site evaluations are typically required to confirm the presence and boundaries of wetlands.

“Work day” – for the purposes of this permit, a work day is a calendar day on which construction activities will take place.

Acronyms

C&D – Construction & Development

CGP – Construction General Permit

CFR – Code of Federal Regulations

CWA – Clean Water Act

eNOI – Electronic Notice of Intent

EPA – United States Environmental Protection Agency

ESA – Endangered Species Act

FWS – United States Fish and Wildlife Service

MS4 – Municipal Separate Storm Sewer System

MSGP – Multi-Sector General Permit

NMFS – United States National Marine Fisheries Service

NOI – Notice of Intent

NOT – Notice of Termination

NPDES – National Pollutant Discharge Elimination System

NRC – National Response Center

NRCS – National Resources Conservation Service

POTW – Publicly Owned Treatment Works

SPCC – Spill Prevention Control and Countermeasure

SWPPP – Stormwater Pollution Prevention Plan

TMDL – Total Maximum Daily Load

USGS – United States Geological Survey

WQS – Water Quality Standard