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Water Docket
EPA Docket Center, (EPA/DC)
WJC West Building, Room 3334,
1301 Constitution Ave. NW.,
Washington, DC 20460

Re: Comments of the Environmental, Health & Safety Communications Panel on the Proposed 2017 National Pollutant Discharge Elimination System General Permit for Discharges from Construction Activities; Docket ID No. EPA-HQ-OW-2015-0828

To Whom It May Concern:

The Environmental, Health & Safety Communications Panel (“EHSCP”) is pleased to provide comments in response to the federal Proposed National Pollutant Discharge Elimination System (“NPDES”) General Permit for Discharges from Construction Activities, published by the Environmental Protection Agency (“EPA”) (the “Draft Permit”) on April 11, 2016.¹ EPA provided a forty-five-day public comment period on the Draft Permit, and we understand that these written comments are timely if submitted on or before May 26, 2016.²

The EHSCP is a consortium of communications environmental, health, and safety professionals dedicated to promoting employee safety and health, and environmental responsibility throughout the communications industry.³ The EHSCP strives to provide constructive input in the development and implementation of environmental, health, and safety standards and guidelines that affect the varied businesses within the communications industry. As such, the panel maintains an active advocacy role, providing comments and recommendations to federal and state agencies when issues concern the communications industry. More information regarding the EHSCP may be found at <https://ehscp.wildapricot.org>.

The member companies provide routine communications services to federal, state and local government agencies, businesses and households nationwide. These same members' systems provide emergency communications for government, industry and private citizens. To

¹ Environmental Protection Agency, Proposed 2017 National Pollutant Discharge Elimination System General Permit for Discharges from Construction Activities, docket ID No. EPA-HQ-OW-2015-0828 (April 11, 2016) [*hereinafter* Draft Permit].

² 81 Fed. Reg. 21328, 21329, col. 1 (April 11, 2016).

³ The EHSCP member companies include AT&T, CenturyLink, Cincinnati Bell, Nokia, Sprint, and Verizon.

provide these services, EHSCP member companies maintain an extensive network of underground infrastructure (fiber-optic and/or copper cable, etc.). As a necessary part of the creation, expansion and maintenance of these services our members place thousands of miles of underground cable independent of development by others. A significant number of these communications cable projects involve the disturbance of more than an acre of land and, thus, would be subject to the terms of the Draft Permit.

A smaller fraction of the work of EHSCP member companies involves the installation of communications infrastructure at non-linear developments such as housing and commercial developments that initially are permitted by others. In these cases, the earth disturbance by member companies typically is confined to narrow rights of way or easements within the footprint of the already-permitted project site, and often is within the area of disturbance managed by BMPs that are or should be specified by the initial permittee's Stormwater Pollution Prevention Plan.

EHSCP and its member companies are committed to working with EPA to develop a final Construction General Permit that fully implements the mandates of the Clean Water Act and assures the protection of the nation's waters while appropriately accounting for the unique features of both linear communications project construction and utility installation at non-linear developments already permitted by other parties.

I. SCOPE OF THESE COMMENTS

The public notice invites interested persons to submit written comments on any aspect of the Draft Permit, but expressly solicits comments on the following specific changes to the current permit:

1. Whether the permit should include a provision for sites with multiple operators requiring those operators to develop a group Stormwater Pollution Prevention Plan ("SWPPP"), which would provide in one place documentation as to how the permit responsibilities will be divided among the permitted parties.
2. The proposed authorization for discharges of external building washdown, provided soaps, solvents, and detergents are not used, and external surfaces not contain hazardous substances.
3. Modifying the deadline for completion of stabilization of disturbed areas from 14 calendar days to 7 calendar days after stabilization has been initiated.
4. Additional controls or requirements EPA should consider to ensure that discharges of pollutants in construction dewatering discharges are minimized.
5. The appropriate inspection frequency and the appropriateness of 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.

6. The frequency of inspections that should be required for snowmelt runoff.
7. The proposed requirement that the initial SWPPP be made publicly available by requiring operators to either post it online on a website, submit it to EPA or include a URL that would link to the most recent version of the SWPPP.

The comments that follow address each of these questions, with the exception of the second as to which EHSCP has no comment.

Most of the content of the current EPA Construction General Permit (“CGP”) and of the new Draft Permit focuses on conventional commercial and industrial builders and homebuilders. Such projects are characterized by (1) controlled perimeters, (2) a relatively small number of controlled discharge locations that serve the site as a whole or a substantial portion of the site, and (3) one entity that qualifies as the operator, as that term is generally used in administration of NPDES permits. Only a small percentage of EHSCP member companies’ construction activity is similar to such projects. As to the Draft Permit’s regulation of those projects, we have no comments.

The majority of EHSCP member companies’ construction activities, however, and the activities that we wish to address specifically in these comments, involve two types of projects that are very different from the conventional construction projects described above: (1) the installation and maintenance of linear underground infrastructure independent of any conventional construction project, referred to as "Linear Communications Projects," or "LCPs"; and (2) the installation of cable and the making of service connections entirely within the footprint of an already-permitted development project (collectively referred to as “Utility Projects”).

The comments that follow first describe the activities that constitute LCPs and the factors that differentiate such projects from more traditional construction projects. We then provide comments in response to those areas for which EPA is soliciting comments insofar as those aspects may adversely affect or do not address the specifics of Utility Projects.

II. CHARACTERISTICS OF LINEAR COMMUNICATION PROJECTS

As used in these comments, the term Linear Communications Projects, or "LCPs," refers to projects within the communications industry that are characterized by narrow widths of construction over a long distance that are *not* undertaken within the footprint of another, permitted construction project. These LCP construction sites are significantly different from conventional perimeter-bounded projects.

Stand-alone LCPs typically are legally and geographically confined to easements and other rights-of-way. These easements often are fifteen feet in width or less. The actual width of earth disturbance is significantly less than that of the entire easement - no more than six to twelve feet, and sometimes as small as a foot or two, depending on the construction technique used - making these projects minimally intrusive.

Also, unlike traditional perimeter-bound construction, a cable-laying project can run for miles. This means that a single LCP can cross multiple political and regulatory boundaries, pass through multiple watersheds, and encounter a wide variety of soil, slope and vegetation types. Accordingly, the project may cross multiple water features, and have numerous discharge points. However, the use of minimally invasive construction methods⁴ typically employed for LCP construction, generally prevent the type of sedimentation and grade changes associated with traditional construction projects.

Furthermore, LCPs are distinguishable from traditional construction projects because construction activity on an LCP occurs in a very small and moving area over the life of the project. Unlike traditional projects, where the construction activity typically creates large areas of disturbance over the entire project footprint for the life of the project, LCPs typically open a small trench, lay or remove cable, and close the trench as the project proceeds, usually within a day. As a result, the area of active construction moves daily, with un-trenched territory ahead and temporarily or permanently stabilized project lands behind. This means that only a very small fraction of the total area of the LCP is actually disturbed at any given time, and that the duration of disturbance at any point is extremely limited in comparison with traditional construction projects and in comparison with non-communications linear projects.

III. RESPONSES TO EPA'S SOLICITATION OF COMMENTS AS APPLIED TO UTILITY PROJECTS

A. Comments Specific to Multi-Party Site Permitting

The Draft Permit provides that, where there are multiple operators associated with the same construction site, all operators obtain permit coverage. As currently written, the Draft Permit allows permit holders at multi-operator sites to either join in the submission of a group SWPPP or to submit their own separate, individual SWPPPs. EPA asks, however, "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 the permitted parties."

According to the Draft Permit, where submission of a group SWPPP is selected, participating operators would be required to ensure that the SWPPP addresses the scope of their construction and provides adequate controls.⁵ Below we provide comments on the various issues presented by this proposal.

⁴ The most common cable installation equipment is either (1) a plow that directly inserts the cable or cable conduit underground and immediately backfills the trench to the original grade or (2) a trenching machine that cuts a narrow trench for subsequent placement of the conduit or cable. In rare instances, a backhoe might be used to dig a short section of a trench for an LCP, such as if the soil is too rocky to allow use of a plow or trencher. In addition, a "handhole" sometimes is placed to facilitate future access to the buried cable at a certain point, such as at a splice point. Typically a small backhoe is used to excavate a small hole to allow placement of prefabricated box-like structure.

⁵ Draft Permit, 7.1, p. 26 footnote 46.

1. *Retaining an Option to Either Participate in a Group SWPPP or to Submit a Separate Individual SWPPP is Better Suited for Construction Permitting*

EHSCP supports retention of the Draft Permit's option to participate in a coordinated SWPPP or submit its own separate SWPPP. The Draft Permit's approach provides much needed flexibility, which is especially important to operators that begin work on a site after the initial permitting and SWPPP preparation has been completed. Such operators, including utility installers, conducting land-disturbing activity within the boundary of a project being developed by others, are not present when the initial SWPPP is developed, in many cases not even having been identified at that stage of project development.

While in some cases, perhaps in most cases, it will be simpler for such later-arriving operators to simply adopt the developer's existing SWPPP, there are cases where this is not in the stormwater pollution program's best interest. For example, where an existing operator's SWPPP is not well-conceived, a utility installer may conclude that proper protection of the receiving waters requires additional Best Management Practices (BMPs). Lacking the ability to force the existing permit holder to change its SWPPP, a utility installer forced to operate under an inadequate existing SWPPP would be unable to incorporate needed additional BMPs into the project's enforceable SWPPP and, perhaps, could be prevented by the existing permit holder from implementing those additional BMPs at all. Lacking the flexibility to either adopt the existing SWPPP or create its own, supplemental SWPPP, a utility installer that comes to a site in mid-development would be unable to ensure that runoff from its work was properly managed.

Similarly, later-arriving utility installers must be protected from overbroad SWPPPs developed by others that assign obligations without regard to whether the obligations are reasonably related to the scope of work or the limited area controlled by utility installers.

Sections III(A)(2) and III(A)(3) of these comments seek to minimize the number of situations in which these concerns are encountered. Unfortunately, it is a reality that even clear language in the permit and the fact sheet will not lead to perfect compliance by all parties 100% of the time. Therefore, even with the changes recommended in Section III(A)(2) and (A)(3), there will still be situations in which adequate BMPs are not specified by the initial NOI filer's SWPPP, and where inappropriate assignments of responsibility are included in such a SWPPP. To ensure that adequate BMPs are always provided for later-arriving operators' work and to avoid the imposition of overbroad obligations on later-arriving operators, it is critical that such later-arriving operators, including utility installers, have the option to develop their own adequate and properly-scoped SWPPP.

EHSCP recognizes that in the 2015 renewal of the federal Multi-Sector General Permit EPA chose to require that multiple permit holders at airports create "[a] single comprehensive SWPPP must be developed for all stormwater discharges associated with industrial activity at the airport before submittal of any NOI [Notice of Intent]." 2015 MSGP at 8.S.3.3 (SWPPP Requirements). The requirement to prepare a single, joint SWPPP is supportable in the static context of an airport. At airports, permit holders (typically the airport, airlines and "fixed base operators" conducting aircraft deicing, and other generators of industrial stormwater on the

airport site) are in place and known when permit coverage is obtained and remain relatively constant throughout the life of the permit. These parties can coordinate at the outset – “before submittal of any NOI” – to develop a comprehensive and inclusive SWPPP that addresses all of their activities. In contrast, in the construction setting operators subject to permitting come and go at sites, often being identified for the first time well after initial permitting, and, in some instances, well after the commencement of earth disturbing activities. These differences argue forcefully for retaining options in the Construction General Permit for either a single SWPPP or a coordinated set of separate SWPPPs developed by individual permittees.

2. *The Permit Should Make Clear that the Party that Authored the SWPPP Associated with the NOI Must Make that SWPPP Available to Subsequent Permit Holders at the Construction Site*

In order to improve coordination at multi-party construction sites and to enable new operators to assess and determine the sufficiency of existing controls, EHSCP proposes that the Draft Permit incorporate language requiring the operator who develops the initial SWPPP to make that SWPPP available to the other operators at the site. At present, the Draft Permit requires only that the operator “keep a current copy of [its] SWPPP at the site or at an easily accessible location so that it can be made available” to agencies conducting inspections.⁶ There is no specific language that would require the party responsible for SWPPP development to make its SWPPP available to other operators at the site.⁷

Incongruously, although the Draft Permit does not require that operators at a multi-party site to grant other entities meeting the definition of operator access to their SWPPPs, the Draft Permit does require that “where responsibilities are shared, all operators must ensure, either directly or through coordination with other operators, that their activities do not render any other operators’ controls and/or any shared controls ineffective.”⁸ To ensure that appropriate controls are proposed in the initial SWPPP for the site, the effectiveness of other operators’ controls are maintained, redundant measures are not implemented, and to generally enhance coordination efforts among operators at a multi-party site, we recommend the inclusion of specific language that would require operators at multi-party sites to grant each other access to already-developed SWPPPs.

3. *The Permit Should Confirm that the SWPPP Associated with the NOI Must Appropriately Address and Provide Adequate BMPs for All Phases of the Project’s Construction*

The Draft Permit includes various requirements related to the scope of the SWPPP, and the nature of construction activities which must be addressed therein. However, the Draft Permit does not specifically state whether the SWPPP developer would be required to address all phases of construction.⁹ In the absence of an explicit requirement to this effect, the required scope of the

⁶ Draft Permit, 7.3, p. 32

⁷ While Section 1.5 of the Draft Permit might offer access by other existing and prospective permittees to the initial SWPPP, it provides only for the on-site notification to include a URL at which the SWPPP can be found “if available.”

⁸ Draft Permit, 1.1.1, p. 1.

⁹ Footnote 46 of the Draft Permit states as follows:

SWPPP is unclear, including to any later-arriving operators. Accordingly, EHSCP requests two clarifications in the permit or in its fact sheet. First, we request that the SWPPP prepared by the initial operator is required to address and to provide adequate BMPs for all phases of construction between that operator's initial ground disturbance and its final stabilization of the site, including the provision of BMPs adequate to control runoff from the installation of utility lines during the life of a project. And, second, to the extent that obligations are assigned to other parties, those obligations must be reasonably related to the scope of work of and the area of control by such other parties.¹⁰

4. *EPA Should Consider Adopting the South Carolina CGP's More Efficient and Effective Approach to Permitting Utilities that Lay Cable and Make Service Connections Entirely Within the Footprint of an Active and Already Permitted Site*

Stepping back for a moment from the specific language of the Draft Permit, our collective experience with many state NPDES programs suggests that there is a better, more streamlined and effective way to ensure the control of construction stormwater generated by utilities operating exclusively within the footprint of an existing construction site. As described in Sections III(A)(1), (2) and (3) above, utility installers that first come on-site after the initial SWPPP has been developed and implemented face a number of difficult challenges. These include ensuring that the developer's SWPPP adequately addresses runoff from their limited

For instance, if both the owner and the general contractor of the construction site are permitted, the owner may be the party responsible for SWPPP development, and the general contractor (or any other operator at the site) can choose to use this same SWPPP, as long as the SWPPP addresses the general contractor's (or other operators') scope of construction work and obligations under this permit.

Draft Permit at 26 (emphasis added). The underlined text makes clear that, while Section 7 of the Draft Permit might be read to imply that any SWPPP must address all aspects of construction on the site at each phase of construction, a SWPPP prepared by a developer *will not necessarily* include all such activities. It is this possibility – that the SWPPP prepared by the party submitting the initial NOI will not address construction work to be performed by a utility installer – that we wish to avoid.

¹⁰ This constraint is recognized in the note to Section 7.1.1 of the current permit:

Note: Where there are multiple operators associated with the same project, all operators are required to obtain permit coverage. The following applies in these situations:

1. . . .
2. If an operator only has operational control over a portion of a larger project (e.g., one of four homebuilders in a subdivision), the operator is responsible for compliance with all applicable effluent limits, terms, and conditions of this permit as it relates to the activities on their portion of the construction site, including protection of endangered species, critical habitat, and historic properties, and implementation of control measures described in the SWPPP in the areas under their control.
3. . . .
4. . . .

(Emphasis added.) It is this same recognition that stormwater management obligations should reasonably relate to an operator's scope of work and to the areas under their control that should be carried forward in the final 2017 CGP.

areas of operation, identifying the obligations in the permit that do and do not apply to them, and avoiding the rare but troubling situation in which a developer's SWPPP vests utility installers with obligations that are not reasonably related to the scope of their work or their limited area control. These challenges are a direct result of the federal permit's imposition of identical, often overlapping and in some cases redundant obligations on all Operators.

A number of states have grappled with the difficulties that result from assigning the same regulatory obligations to Operators with fundamentally different roles and functions. Based on our extensive experience operating under a number of these modified – and EPA-approved – programs, we offer the tested models from Georgia and South Carolina for EPA's consideration. South Carolina's process is a further refinement of innovations previously adopted by the State of Georgia and reflects the approach that we recommend to the Agency hereto define the responsibilities of a utility operating exclusively within the footprint of a construction site that is already covered by the Construction General Stormwater Permit.

a) *The South Carolina Construction General Stormwater Permit Model*

South Carolina offers "Utility Providers" the option of submitting an Annual Blanket NOI ("ABNOI") and also provides additional permitting options, which would reduce the potential for implementation of overlapping and inconsistent stormwater pollution control technologies.

The South Carolina permit defines Utility Providers as:

entities responsible, either directly or indirectly, for the construction, installation, and maintenance of conduits, pipes, pipelines, cables, wires, trenches, vaults, manholes, and similar structures or devices for the conveyance of natural gas (or other types of gas), liquid petroleum products, electricity, telecommunications (telephone, data, television, etc.), water or sewage.¹¹

Entities meeting the above definition would be required to obtain coverage by either completing a Contractor Certification Form or, as an alternative, submitting an ABNOI.¹² The Contractor Certification Form must include:

- The entity seeking coverage's name, address, telephone number, and Employer Identification Number (EIN) as established by the U.S. Internal Revenue Service;
- Project/Site name, subdivision name and lot number(s) (if applicable), NPDES coverage number for Primary Permittee¹³;
- A certification statement, signed and dated by an authorized representative; and
- Any other information, pertinent to this permit, the Department requires on the NOI form.¹⁴

¹¹ South Carolina Department of Health and Environmental Control, NPDES Permit for Stormwater Discharges From Construction Activities, Permit No. SCR100000, § 2.2.3(A) (Oct. 15, 2012).

¹² *Id.*

¹³ *Id.*; see also 2.3.2

In addition, and perhaps most important, coverage is also contingent upon (1) the land-disturbing activities and location of utilities having been accounted for within the approved Comprehensive SWPPP (C-SWPPP) of each construction site and (2) attendance at a pre-construction meeting with the Primary or Secondary Permittee to confirm understanding of those requirements.

b) *The Georgia Construction General Stormwater Permit Model*

The state of Georgia has published three Construction General Stormwater Permits, one of which applies to the presence of multiple “Operators” conducting land disturbing activities at a construction site.¹⁵ The Georgia permit provides separate definitions for Primary and Secondary Permittees, as well as for Utility Companies, as follows:

- “Primary Permittee” means the Owner or the Operator or both of a tract of land for a construction project subject to this permit.¹⁶
- “Secondary Permittee” means an owner, individual builder, utility company, or utility contractor that conducts a construction activity within a common development with an existing primary permittee.¹⁷
- "Utility Company or Utility Contractor" means, for purposes of this Permit, an entity or sub-contractor that is responsible, either directly or indirectly, for the construction, installation, and maintenance of conduits, pipes, pipelines, cables, wires, trenches, vaults, manholes, and similar structures or devices for the conveyance of natural gas (or other types of gas), liquid petroleum products, electricity, telecommunications (telephone, data, television, etc.), water, storm water or sewage.¹⁸

Where these entities are present, the Georgia permit requires that only one single NOI for the Primary Permittee be signed and submitted.¹⁹ Utility Companies, as a type of Secondary Permittees, are offered two paths of compliance: 1) submission of a truncated NOI;²⁰ or 2) submission of an ABNOI, which would cover all construction activities within common developments on a statewide basis for the calendar year in which the ABNOI is submitted.²¹ As part of the ABNOI, the Utility Company would be required to certify that it would adhere to the applicable provisions of the Primary Permittee’s Erosion, Sedimentation and Pollution Control Plan (for all intents and purposes, this is analogous to a Construction Best Management Practice Plan (CBMPP)).²²

¹⁴ *Id.*

¹⁵ State of Georgia Department of Natural Resources Environmental Protection Division, Authorization to Discharge Under The National Pollutant Discharge Elimination System Storm Water Discharges Associated With Construction Activity For Common Developments, General Permit No. GAR100003 (Sept. 23, 2013) [*hereinafter* General Permit No. GAR100003].

¹⁶ *Id.*, at p. 6.

¹⁷ *Id.*

¹⁸ *Id.* at p. 7.

¹⁹ *Id.*, at part II.B.1.

²⁰ *Id.*, at part II.B.2.

²¹ *Id.*

²² *Id.*

We recognize that differentiating the responsibilities of different classes of Operators is not an approach that EPA has taken in prior federal CGPs. Based on our experience in these states, however, we believe that such speciation is a superior approach because it most clearly advises different Operators of their respective responsibilities. Such clarity and streamlining results in more uniform implementation of the permit's requirements and more consistent protection of the receiving waters. We would be happy to discuss the operation of these state programs with the Agency.

If EPA decides to adopt the South Carolina model described above, we would withdraw our comments in Section III(A)(1), (2) and (3) as no longer necessary. Should EPA decide not to adopt the South Carolina approach in its CGP, we would ask that the Agency confirm that the South Carolina and Georgia models will remain viable and approvable for states that choose to adopt them and that EPA's approach of imposing identical obligations on all classes of Operators reflects the Agency's policy preference but is not mandated by the federal Clean Water Act or any applicable federal regulation.

B. EPA's Proposed Reduced Timeframe for Stabilization of Disturbed Areas Does Not Take Into Account the Unique Problems Posed by Linear Construction Projects

According to the Draft Permit, EPA is considering modification of the deadline to complete stabilization of disturbed areas from 14 calendar days to 7 calendar days after stabilization has been initiated.²³ Currently, the 2012 CGP requires operators to immediately implement stabilization measures where construction activities have ceased, and requires only that sites discharging to sensitive waters complete stabilization within a 7-day timeframe. This proposed modification does not take into account the unique issues faced by LCPs, which, as described above, may extend over many miles. The distance these LCPs span make it exceedingly difficult to ensure final stabilization in a reduced timeframe.

Modification of the deadline for the completion of stabilization from 14-days to 7-days after initiation is not feasible for most LCPs. Initial temporary stabilization, of course, is an on-going activity conducted as the line is placed over period of time, almost uniformly exceeding 7-days. In these types of projects, final stabilization measures typically consist of preparation for permanent vegetation over the entire length of the placement or over large portions of the project which are complete. It is simply not often feasible to complete the activities necessary to convert to permanent seeding/stabilization in the proposed, compressed 7-day period.

We note that the Fact Sheet for the 2012 CGP, which the Draft Permit Fact Sheet incorporates by reference, states that "simply providing some sort of soil cover on [disturbed] areas can significantly reduce erosion rates, often by an order of magnitude or more."²⁴ Based on the foregoing it would seem that the current requirement that stabilization be initiated immediately would be sufficient to protect those water bodies not designated as sensitive, while

²³ Draft Permit, 2.2.14(a)(ii), p. 13.

²⁴ Fact Sheet 2012 CGP, p. 77 (incorporated by reference).

still taking into account the difficulties posed by completing stabilization for a project that extends over many miles on such a reduced schedule.

EHSCP recommends that the current 14-day deadline for the completion of stabilization be preserved in the final permit for LCPs, subject of course, to the 7-day deadline for project areas discharging to sensitive waters. Should EPA choose to impose the 7-day deadline for all projects, we request that the Agency provide further information explaining why the current requirement to initiate stabilization, which may reduce erosion rates by an order of magnitude or more, is insufficient.

C. The Current Construction Dewatering Controls are Sufficient to Address Associated Pollution and Prevent Degradation of Waterbodies

The Draft Permit includes seven requirements that would need to be implemented to address pollution associated with dewatering activities. EPA requested comments “on additional controls or requirements EPA should consider to ensure that discharges of pollutants in construction dewatering discharges are minimized.” The request, however, does not identify any specific deficiency with any of the seven specified controls, nor provide an explanation of why additional or different controls might be preferable.

In EHSCP member companies’ experience with dewatering trenches, the seven current measures adequately control pollution runoff and have demonstrated their capacity to ensure compliance with prior versions of the CGP. Moreover, over time, these established controls have become an integral part of the construction process. Industry’s familiarity with appropriate implementation and maintenance, which promotes effectiveness of these controls, should weigh in favor of retaining the permit as it is.

If additional or different measures are included in the final version of the CGP, EHSCP requests that EPA explain its conclusion that current controls are not legally sufficient, identify any new controls that it wishes to propose, and explain why those controls are necessary and legally appropriate. That information should be made available with provision for public comment before any additional controls are incorporated into this section of the permit.

D. Initiating Inspections After Rainfall Events and Every Seven Days is Ill-Suited to LCPs Which Span Areas With Different Weather Conditions

In the Draft Permit, EPA solicits comment on the appropriate inspection frequency. In particular, EPA solicits comment on 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 2012 CGP, this inspection frequency applies to sites discharging to sensitive waters (i.e., impaired waters and Tier 2, 2.5, or 3 waters). EPA requests comment on the appropriate inspection frequency for all sites (except for sites qualifying for a reduction in inspection frequency in Part 4.4 below), specifically requesting information on situations where this frequency would be unreasonable. As an alternative, EPA also requests comment on

requiring the inspections to occur once every 7 days, but without the option of inspection once every 14 calendar days and within 24 hours of a storm event.

EHSCP would support elimination of the 14-day/within 24 hours of a storm event sampling frequency and replacing it with a 7-day inspection frequency. We cannot, however, support the additional requirement to perform an additional inspection following rainfall events of 0.25" or more.

Increasing the frequency of inspections for all construction projects to a uniform 7-day cycle would allow for a more streamlined integration of the CGP requirements into construction schedules. However, EPA's proposal to add a requirement that inspections be conducted after a storm event of 0.25 inches or more to the 7-day inspection schedule would be redundant and exceedingly difficult to implement in the LCP context. LCPs are, by definition, linear, often exposing different sections to different weather patterns over the course of a day. Moreover, because temporary stabilization is conducted as the project moves forward, and because areas ahead of the active work often are entirely undisturbed, the notion of a >0.25" rainfall event over the project's footprint is neither clear nor necessarily meaningful. And, even if a coherent definition of a qualifying storm in the context of an LCP were developed, meteorological data would have to be specially collected to confirm the existence of such an event and performance of the resulting inspection generally would involve driving the right-of-way, a process more likely to disturb the project area than to allow meaningful additional protection of it. For these reasons, most current LCPs opt for the 7-day inspection cycle rather than the less-frequent 14-day cycle simply to avoid the uncertainties and potentially counterproductive nature of event-specific inspections.

The current proposal does not reflect any consideration of these issues that affect event-specific inspections at LCPs. Given the difficulty in defining a qualifying storm event for such projects, the limited area of disturbance that could potentially be affected by such an event, and the probability that a special inspection would do more harm than good, EHSCP recommends that, for LCPs, the final permit contains a uniform 7-day inspection cycle, but does not include a further requirement to perform additional storm event-specific inspections.

E. Given the Relative Consistency of Snowmelt Volume, it is Likely that Increasing the Frequency of Inspections Would Have Limited Value

Similar to the previously described inspections following storm events, the Construction General Permit requires operators to conduct an inspection of the site once every 14 calendar days and within 24 hours of the occurrence of runoff from snowmelt.²⁵ EPA solicited comments on modifying the frequency of required inspections after a snowmelt event given that snowmelt discharges generally occur over multiple days.

In EHSCP member companies' experience snowmelt flows tend to be more predictable. Accordingly, it is unlikely that modifying the design of BMPs and more frequently inspecting those BMPs would further reduce erosion and sedimentation. Furthermore, in the context of LCPs, it is rare for a project to not be stabilized during the winter months, especially in those

²⁵ Draft Permit, 4.2.1 - 4.2.2, p. 20.

that have snowfall and snowmelt. Accordingly an inspection frequency beyond once every 14 days would likely be of limited value to LCPs. Therefore, it is our impression that the current snowmelt inspection frequency of once every 14 days is adequate.

F. Given the Nature of SWPPPs the CGP Should Provide the Option to Either Post the SWPPP on a Website or Submit the SWPPP to EPA and Should Ensure that Critical Infrastructure Information Continues to be Protected

Currently, the CGP requires that operators keep an up-to-date copy of their SWPPP on-site and make the SWPPP available during federal and state agency inspections. The CGP further allows EPA to provide access to portions of the SWPPP to members of the public upon request, subject to the processing of requests for Confidential Business Information pursuant to 40 CFR Part 2, Subpart B. EPA has requested comment on a potential additional requirement that the initial SWPPP be made publicly available by either having operators post the SWPPP online, to include a URL linking to the SWPPP in a submission to the Agency which could then be posted on EPA's Enforcement and Compliance History Online (ECHO) database, or submit selected SWPPP information as a part of the NOI.

Initially, EHSCP notes that there is no legal obligation under the Clean Water Act to provide public access to SWPPPs generated pursuant to the CGP. We recognize, as the Agency states, that this inquiry is based instead on EPA's policy preference to disseminate program information where and to the extent reasonable.

In that spirit, EHSCP believes that the best approach to disseminating meaningful information related to CGP SWPPPs for LCPs is to ensure that there is appropriate flexibility in how such information may be provided. Specifically, we propose that permittees on LCPs be afforded a choice between posting their initial SWPPP at a URL (or providing EPA with a link to such a posting) and, in the alternative, providing selected information from the SWPPP as a part of an NOI. We note that the recently issued 2015 MSGP embraces both of these alternatives.

Further, we request that the final permit confirm that Confidential Business Information (as defined in 40 CFR Part 2, Subpart B) and Restricted Information (as currently defined by the 2015 MSGP) may be excluded from any posted SWPPP, and that such material will not be disclosed by EPA in response to a request either for a copy of the SWPPP or of an NOI that contains such information.

1. Providing Public Access to Initial SWPPPs Prepared by Utility Providers Via a Website Would have Limited Usefulness and Could be Counterproductive

SWPPPs are intended to be living documents, with initially specified BMPs that are continually evaluated and, often, changed as required by actual conditions on the site. This is especially true for linear utility projects, where BMPs or candidate BMPs are specified at the outset of a project but are refined and often replaced with other BMPs and even other construction methods as the project progresses and actual site conditions along the route are

encountered and assessed. This process is ubiquitous and continual. As a result, publication of a full SWPPP at the commencement of a project will provide little definitive information concerning the BMPs implemented at various locations along the route based on necessary re-assessment as route conditions are encountered.

Publishing a full SWPPP would, in fact, be misleading to the public, leading readers to expect specific construction techniques or BMPs that may, by the time the construction team reaches a given stretch of a linear project, have been superseded by other more applicable BMPs based on the project managers' professional judgment. Moreover, given the rate of progress of linear utility projects (up to one mile, or 5280 feet per day) and the unacceptable burden that would be associated with constantly updating the publicly available SWPPP to reflect day-to-day revisions of the Plan, it is almost certain that a SWPPP posted to a website would mislead the public as to the actual practices they should expect to see on any given portion of a linear telecommunications project. As a result, not only would the transparency objective sought to be advanced by posting be frustrated, but mistaken expectations derived from outdated SWPPPs may lead to citizen enforcement actions that, while based on mistaken expectations, would nonetheless require permittees to respond and, in some cases, even mount a formal and costly legal defense despite a utility provider's diligent implementation of BMPs based on the professional judgment of its engineers.

Providing utility providers constructing LCPs with a choice between posting the initial SWPPP to a URL and including specified information related to their SWPPP in an NOI will allow those providers, whose projects are uniquely unsuited to posting and continually updating an initial SWPPP, to reasonably inform the public of their practices in a manner that is compatible with the realities of LCP construction.

2. *Given the Critical Nature of Communications Infrastructure, Dissemination of Facility, Location and Construction Details Should be Made Subject to Special Protections*

LCPs lay critical national communications infrastructure and, thus, need to be protected to ensure continuity of communications for government as well as private users. Publication of locations of potentially vulnerable junctions and access points, of detailed information on the path and depth of cabling, and of other features of this infrastructure would compromise the industry's longstanding and, to-date, successful protection of the nation's telecommunications infrastructure. Even where a physical examination or surveillance of telecommunications construction projects might reveal certain location and other information about that infrastructure, providing electronic access to compilations of such information for all telecommunication projects would constitute a serious breach in the security of those systems. The aggregated information that would be revealed making such information available, therefore, constitutes a threat to critical communications infrastructure. SWPPPs for LCPs often contain just such high-resolution information about facilities, locations and construction details. Making such documents freely available to the public would breach the industry's careful husbandry of sensitive information, and could facilitate malicious mischief or more serious threats to the nation's critical communications infrastructure.

Therefore, with regard to either the posting of an initial LCP SWPPP to a URL or the provision of selected information about a LCP SWPPP, it is important to protect sensitive information while simultaneously disseminating information that can, safely, be made public. Constraints recognized in the 2015 MSGP provide a reasonable demarcation between sensitive information and information that may safely be made public. There, EPA agreed to recognize and protect both Confidential Business Information (“CBI”) (as defined in 40 CFR Part 2, Subpart B) and Restricted Information (as defined in Appendix A to the 2015 MSGP).²⁶ Accordingly, we urge EPA to include CBI protections and the protection of Restricted Information as that term is defined in Appendix A of the 2015 MSGP in any provisions of the final permit here that require permit holders to make public, either directly or indirectly through EPA, any information contained in a LCP SWPPP.

IV. CONCLUSION

EHSCP appreciates the opportunity to provide these comments in response to the Draft Permit and to bring the unique characteristics of, and issues faced by the telecommunications industry to the EPA’s attention. We look forward to the opportunity to work with EPA to develop the technical detail necessary to appropriately address the issues raised in these comments and produce a final Construction Stormwater General Permit that is practicable in light of the unique circumstances presented by the telecommunications and utility work discussed above.

Should you have any questions about the information included in these comments please contact me at the number below.

Sincerely,



Gary Schongar
Verizon
Chair, Environmental, Health & Safety Communications Panel
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²⁶ 2015 EPA MSGP, Section 5.4, 5.4.1 and 5.4.2. We assume, and ask the Agency to confirm, that the protections that attach to Restricted Information under the 2015 MSGP, and that would apply to Restricted Information upon incorporation of similar provisions into the final permit here, apply to information provided to EPA as a part of a permitting process, regardless of any limitation on the protections provided by the *Critical Infrastructure Information Act of 2002* (“CIIA”), codified at 6 U.S.C. §§131 - 134. Should such not be the case, additional protection of critical infrastructure information would need to be incorporated into the final CGP to protect against real and reasonably foreseeable threats to critical communications infrastructure the construction of which is or will be subject to the final CGP.