

October 6, 2021

TO: AGC Nebraska Membership

FROM: AGC Nebraska Environmental Committee

The Nebraska Associated General Contractors Environmental Committee is committed to collaborating with environmental regulatory agencies with our members in mind. Over the past six months, we have been working diligently with the Nebraska Department of Environment and Energy (NDEE) on their updates to the Industrial Stormwater Permit (ISW).

The State of Nebraska is required to complete updates to their ISW every five years because of the Clean Water Act and their compliance with the United States Environmental Protection Agency (USEPA). As the State of Nebraska adheres to the Clean Water Act, they can operate their own National Pollutant Discharge Elimination System (NPDES) permit program as long as it meets the standards set forth in the Clean Water Act. For areas that do not have their own approved permit program, the USEPA has its own permits called the Multi-Sector General Permit (MSGP) which was renewed in March of 2021. The State of Nebraska has decided it must follow the MDGP for their ISW permit. After consulting with other States and conferring with the Associated General Contractors of America, we have determined that this is not accurate.

After meeting with the State's NPDES team, commenting on the ISW permit draft, meeting with the NDEE Director Jim Macy, and requesting a public hearing, it appears the NDEE is not budging from their position. While they are required to hold a public hearing at our request, they are not understanding the impact this permit will have not only on the regulated community but on all citizens of Nebraska and those who depend on our goods and services.

We are bringing this to your attention as members as this permit will have a direct financial impact on your industrial facilities, including but not limited to: temporary and/or permanent asphalt and concrete plants, landfills, recycling facilities, storage yards, and aggregate processing (crushing) sites. The USEPA's MSGP implements an element called the Additional Implementation Measures (AIM), which is included in Nebraska's ISW draft permit. This tiered system is burdensome and confusing for the regulated community, and, in Nebraska AGC's opinion, unnecessary for Nebraska.

The proposed ISW implements a level system which will increase overhead costs for a variety of reasons, including lab analysis costs, consulting fees, and an overall increase in time required for compliance and recordkeeping. The tiers in the proposed permit range from level 1 to level 3; 3 being the most extreme and could require the site to obtain its own individualized industrial stormwater permit. The Nebraska

AGC understands the importance of protecting the environment, however, the AIM requirements are burdensome and arbitrary.

When the Committee asked about AIM and how the NDEE plans on implementing it along with the rest of the draft ISW permit, the State did not have an answer for us. The AIM requirements will also increase the burden on the NDEE which, in turn, will increase the cost of government. Furthermore, confusing regulations without clear plans for implementation could lead to costly and fines. Non-compliance with the CWA could result in EPA violations up to \$56,400/day per violation.

Another issue the Nebraska AGC Environmental Committee has with the ISW draft permit concerns concrete and asphalt batch plants. These sites have been removed from the construction storm water permit and will now be regulated by the ISW permit. This will require plants to have their own Stormwater Pollution Prevention Plans (SWPPP), complete discharge monitoring requirements, and implement the appropriate AIM levels when requires.

Your Nebraska AGC Environmental Committee has developed a fact sheet to help you understand the ISW permit drafts and its implications. The public hearing has been set for Thursday, November 11<sup>th</sup> at 9:00 a.m. The Nebraska AGC will be discussing these drastic changes with Chapter leadership and making decision on next steps. While we move forward advocating on behalf of the industry, please review the ISW permit and be proactive in case it becomes a requirement for your operations.

Should you have any questions, please do not hesitate to contact AGC Nebraska Executive Director, Katie Wilson or one of the committee members listed below.

Best Regards,

AGC Nebraska Environmental Committee/ISW:

Brooke Muhlack (Knife River), Chair

Jim Ball (Hawkins), Co-Chair

Russ George (Concrete Industries)

Terry Wilhelms (Werner Construction)

Lauren Wironen (Kiewit)

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