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west virginia department of environmental protection

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Harold D. Ward, Cabinet Secretary  
dep.wv.gov

September 8, 2025

RE: WV Permit No. WV0116025  
Response to Public Comments

Dear Citizen,

The West Virginia Department of Environmental Protection's (WVDEP) Division of Water and Waste Management (DWWM) would like to take this opportunity to thank those individuals and organizations who submitted written comments on the General West Virginia/National Pollutant Discharge System (WV/NPDES) Permit for Stormwater Discharges from small Municipal Separate Storm Sewer Systems Permit No. WV0116025.

DWWM published a Class II legal advertisement in newspapers across the State where MS4's are located; announcing the WVDEP's desire to reissue the general permit for stormwater associated with small Municipal Separate Storm Sewer Systems. The original public notice period for the draft of the proposed small MS4 general permit was from April 17, 2025 through May 17, 2025, but was extended 30 days until June 17th, 2025

This responsiveness summary contains the issues and concerns that were identified in the written comments received during the comment period. WVDEP received numerous comments and they are numbered in the order from beginning to the end of the permit..

Comments will appear first, with the WVDEP's response following.

Promoting a healthy environment.

1. One commenter noted that on page 3, the reference to Appendix E as “Post-Construction Stormwater Resources” is misleading, as most of the references listed are erosion and sediment controls.

**The agency concurs with the comment and changed the table of contents on page 3 and Appendix E on page 51. The language has been changed to “Erosion and Sediment Control resources”**

2. Multiple commenters suggested change to the language on page 4, Part I. C. MS4 Service Area, and also to the definition of MS4 Service Area in Appendix A. The assertion was that the language and definition of MS4 Service Area could require MS4’s to operate outside of their municipal jurisdictions.

**The DWWM concurs with these comments and the language in the permit has been revised on both page 4 and the definition.**

3. Two comments were made from the same commenter on page 7, Part II A. General requirements, regarding Maximum Extent Practicable.

”The Commission/District requests confirmation that compliance for purposes of this Draft MS4 Permit will only be measured against a permittee's compliance with the terms and conditions of the MS4 Permit itself.”

**The Fact Sheet states “The draft permit requires each permittee to develop, implement, assess, and enforce a Stormwater Management Program, which outlines how the permittee intends to comply with the terms and conditions specified in the permit.”**

“the Commission/District is seeking confirmation that it will be held to the same compliance standard as any other MS4, which is compliance with the General Permit only, and that it will not be subjected to a sliding scale discretionary compliance standard based on any perceived stormwater control abilities specific to the Commission/District.”

**The Fact Sheet states “It is recognized that "pollutant reductions that represent MEP may be different for each small MS4, given the unique local hydrologic and geologic concerns that may exist and the differing possible pollutant control strategies. Therefore, each permittee will determine appropriate BMPs to satisfy each of the six minimum control measures through an evaluative process" (Federal Register, Volume 64, No. 235, page 68754, December 8, 1999.).**

4. Multiple commenters noted that in various locations in the permit there was language that required the submission of the SWMP to WVDEP, the first of which was on page 12, Part II B.c.

**This MS4 General Permit follows the EPA one step approach. Under this process Permittees are not required to submit the SWMP for approval but may submit a SWMP for a courtesy review. The DWWM has removed reference language to SWMP submittal.**

5. One commenter made the following comment regarding the language on page 18, Part III D.2.c.i “ *Inspection Frequency. Each Regulated Construction Activity shall be inspected at least once during the period of active land disturbance. High-priority construction activities must be inspected at least once per month. The SWMP shall define high-priority construction activities to include (1) projects that have a land-disturbance area greater than 5 acres; (2) projects that drain to waterbody subject to a TMDL; and, as appropriate, (3) any other project types or project locations determined by the Permittee to present an elevated risk of impacts to water quality based on local conditions*”

“The Commission/District requests that this provision be modified to require the inspection of high priority construction activities at least once per quarter.”

**The DWWM asserts that due to the nature of the high priority construction activities involved, the inspection frequency should remain at least once per month.**

6. One commenter noted that on page 18, Part III D.2.c.ii “Inspection Report Forms,” the language “ ... *and (6) documentation that any corrective actions prescribed by the operator’s inspector, the Permittee, or the Department have been completed in a timely manner as required. The form shall include a space to document any deficiencies discovered during the inspection.*” essentially requires the MS4 to take place of a WVDEP inspector as it relates to a construction site’s compliance with its WVDEP-issued stormwater construction permit.”

**The DWWM concurs with the commenter, that obligating the permittee to monitor conditions prescribed by The Department is outside the scope of MS4 requirements. Therefore the language has been revised to remove “or the Department” from Part III D.2.c.II.**

7. One commenter highlighted various typographical errors and omissions throughout the permit.

**The DWWM has made the various changes and added or changed the language proposed by the commenter throughout the permit.**

8. Multiple commenters noted that on page 21 and 22 reference was made to an appendix containing the latest version of the departments Compliance Spreadsheet.

**The DWWM concurs with this comment. There was not an appendix containing the Compliance Spreadsheet. In place of the references to an appendix, the URL/ Website address for the Compliance Spreadsheet has been provided where these appendix references occurred.**

9. Multiple comments were made on page 23, Part III E.2.f.ii. Long Term Maintenance Agreements.

One commenter noted in the sentence “Such agreements shall require the Regulated Project proponent, its successor,..” the word proponent be changed to “owner or operator.”

**The DWWM concurs with this comment and the language in the permit has been revised.**

Another commenter stated “We have been utilizing the building departments project design Building Permit approval as the enforcement mechanism instead of a maintenance agreement and have had success by doing so. The reasoning is the LID structure was required for the design and must stay intact and functioning as per the approval. It is a commonsense approach that has been successful thus far. If the structure is desired to be removed then another structure, etc. of some sort would have to be approved via a Building Permit.”

**The DWWM asserts that a long-term maintenance agreement is an integral part of the general permit and disagrees that a change to the permit should be made.**

10. On page 31 one commenter made the following comment and suggested adding the following underlined language to Part V.A. TMDL Applicability:

“This section states that Part V applies to ‘any regulated MS4 that discharges to a waterbody subject to a TMDL that has been approved by EPA.’ Many TMDLs do not identify MS4 discharges as a significant source of the pollutant of concern and therefore assign no wasteload allocations to MS4’s. The proposed Small MS4 Permit should clarify that permittees do not need WVMWQA to implement BMPs to address pollutants that are not discharged from the MS4. Accordingly, suggests that the first sentence of Part V.A. be revised as follows: ‘This Part V applies to any regulated MS4 that discharges to a waterbody subject to a TMDL that has been approved by EPA, provided the TMDL allocates an individual or aggregate wasteload to the Permittee’”

**In the absence of monitoring, the selection of BMP’s should address the reduction of pollutants listed in the TMDL if activities within the MS4 may have the potential to discharge the pollutant of concern. The language located on Page 31, Part V.A. of the general permit adequately addresses this comment.**

**Page 31, V.A.** *“This Part V applies to any regulated MS4 that discharges to a waterbody subject to a TMDL that has been approved by EPA. For TMDLs based on biological impairment, the TMDL Implementation shall be based on the stressors for which a wasteload allocation is assigned to the Permittee. The SWMP must include the following measures:”*

11. Two commenters made comments on Page 32 Part VB.a) and a)i. The commenters were concerned with requirements for submission of BMPs in the Notice of Intent (NOI) as noted in the permit text below. The commenters noted that the correct document for BMP’s should be the SWMP, and not the NOI.

a) *Each discharger to a TMDL water shall propose BMPs to reduce pollutants of concern to the TMDL in the NOI.*

i) *Upon approval of the NOI, and updates to the SWMP, permittees shall implement BMPs and each year thereafter, evaluate BMP effectiveness. The Annual Report shall contain the evaluation, along with proposed new BMPs to replace ineffective ones.*

**The DWWM agrees with the comments and recommendations and the language has been revised in the permit to remove the requirement for BMP's in the NOI and corrected the language to state that BMP's shall be listed in the SWMP.**

12. One commenter made the following comment and suggested adding the italicized language below to the permit on page 33, Part V.D. Local Sediment, Metals and Nutrients TMDLs'

“This section states that permittees should implement one or more BMPs approved by the Chesapeake Bay Program to address pollutants identified in relevant TMDLs. Although WVMQWA appreciates that the department has made that option available, it is also important to recognize sediment, metals, and nutrients are often discharged from construction sites, development activities and other land uses. The Chesapeake Bay TMDL requirements in part V.G are directed at the same activities. To allow permittees greater flexibility to adopt the most effective pollutant reduction strategy to address those sources, WVMWQA suggests that the Department add a second compliance option under part V.d, as Follows:

*‘2. Implement any BMP listed in Part V.G.1.’”*

**The Language for the Chesapeake Bay TMDL and PRP has been removed from the permit which included Part V.G.1., therefore this text will not be added to the permit.**

13. Eight comments were made on the section regarding the Chesapeake Bay TMDL and associated PRP language that was part of the permit on page 35.

**These comments will not be addressed because the Chesapeake Bay TMDL PRP language has been removed from this General Permit.**

14. One commenter made a suggestion regarding language change in section H Other TMDL's which is on page 39. *“BMP's shall be informed by the TMDL report”* “Should the word ‘informed’ be changed to determined, or something?”

**The referenced section with that language has been removed.**

15. The following comment was made regarding Part VI. Standard NPDES Permit Conditions, page 35.

“Many sections of the appendix in Part IV do not apply to this permit.”

**The NPDES Federal general permit requires all appropriate citations from the regulations. No changes have been made.**

16. One commenter noted on Page 36, Part Vi. A.11. Outlet Markers. “The statement references ‘approved SWMP’, suggesting WVDEP approves SWMP's in this General Permit. Also, are there Permit conditions for a “representative outfall” in this Permit? Per Part IV Appendix C on page 44 - Monitoring and Reporting - ‘Discharge monitoring is not required for compliance purposes by this general permit. If the Permittee chooses to monitor stormwater discharges for informational or screening purposes, they may do so.’ Please clarify.”

**This permit does not require monitoring for compliance, however the EPA requires that a representative outfall must be designated and an outlet marker placed as close as practicable to the location.**

17. One commenter had a concern with the language on page 39 Part VI. D.2.a. Immediate Reporting. “A written submission shall be provided within five (5) days of the time the Permittee becomes aware of the circumstances.” “We currently contact the Spill hotline and Work with DEP inspectors on these illicit Discharges. We also document these on our GIS system. Requiring a written submission seems just additionally burdensome and should not be required.”

**Federal regulations require the 5 day written notification 40 CFR 122.41(l)(6)(i) therefore the permit will not be changed.**

18. One commenter had a concern with page 46, Appendix B, section B 6. 7. 8 and 9. “Lines 6 a, b, c and 7, 8, and 9 appear to be more information than needed for submitting an NOI.”.

6. *The following receiving waters information:*

- a. *The names of the receiving surface waters to which the MS4 system discharges; and*
- b. *Whether or not the receiving waters are listed as impaired in the West Virginia Combined 2018/2020/2022 305(b)/303(d) Integrated Water Quality Monitoring and Assessment Report; and*
- c. *Whether or not the receiving waters are subject to a TMDL.*

7. *The names of any physically interconnected MS4s to which the MS4 discharges;*

8. *A list of all existing signed agreements between the operator and any applicable third parties where the operator has entered into an agreement in order to implement minimum control measures or portions of minimum control measures; and*

9. *If the two more MS4 operators are submitting a joint NOI, the information referenced below in subsection C.*

**The DWWM recognizes that the Notice of Intent requirements have increased from the previous iterations. This is a result of changing from a Two Step permitting process to the One Step permitting process. It is in this NOI where the agency will receive critical information describing the MS4. Item 6. is required by the EPA. Items 7. 8. and 9. contain data and binding agreements essential for approving the NOI. Therefore the DWWM disagrees with the comment.**

19. One commenter noted on page 51, Appendix E that two of the URL’s were not correct.

2. “Maryland Soil erosion and Sediment control BMP Manual” and 4. “USEPA has a listing of available stormwater manuals on its website”.

**The URLs have been updated**

20. One commenter inquired “If we understand correctly the overall permit, other than the Chesapeake Bay Area, is to be handled to the MEP. If there is any part that is other than the MEP please clarify.”

**The MEP standard shall apply to all MS4’s registered under this General Permit. The language in the Fact Sheet has been revised.**

21. One commenter requested “The Commission/Districts requests that WVDEP revise its Fact Sheet to remove any reference to meeting the pollution reduction goals by the end of 2025”.

**This comment relates to the PRP language that has been removed from the Permit and the Fact Sheet.**

After careful review of all comments, the Division will issue this General Permit on September 8, 2025. Notice is hereby given of your right to appeal the terms and conditions of the permit of which you are aggrieved to the Environmental Quality Board by filing a NOTICE of APPEAL on the form prescribed by such Board, in accordance with the provisions of Section 21, Article 11, Chapter 22 of the Code of West Virginia within thirty (30) days after issuance of this General Permit.

Thank you for your interest and comments on the Municipal Separate Storm Sewer Systems General Permit. If you have any further questions or concerns, please do not hesitate to contact Samuel “Jeff” Smith of my staff at 304-926-0499 ext. 43764 or by email at [samuel.g.smtih@wv.gov](mailto:samuel.g.smtih@wv.gov).

Sincerely,

Jeremy W. Bandy  
Director

JWB/sgs

Enclosure