

**DEPARTMENT OF ENVIRONMENTAL  
PROTECTION**

**PUBLIC HEARING AND COMMENT ON THE GENERAL  
WEST VIRGINIA/NATIONAL POLLUTANT  
DISCHARGE ELIMINATION SYSTEM (WV/NPDES) PERMIT WV0116025  
FOR STORM WATER DISCHARGES FROM SMALL MUNICIPAL SEPARATE  
STORM SEWER SYSTEMS**

The Department of Environmental Protection's (DEP) Division of Water & Waste Management (DWWR) would like to take this opportunity to inform those who attended the public hearing as well as those individuals who submitted written comments on the status of the General West Virginia/National Pollutant Discharge Elimination System (WV/NPDES) Permit for Storm Water Discharges From Small Municipal Separate Storm Sewer Systems, Permit No. WV0116025.

DWWM published a Class II Legal advertisement in selected state newspapers announcing the agency's desire to issue the new General Storm Water Permit. The public notice announced a 30-day comment period and a public meeting date to discuss the draft General Permit.

The public meeting was held February 25, 2003, in an additional effort to gain public input on the draft permit. The meeting was held at the DEP Headquarters Building Training Room in Nitro.

During the public hearing, a question and answer session was held and the meeting was tape-recorded. A Responsiveness Summary is prepared in lieu of a verbatim transcript. The Responsiveness Summary highlights the issues and concerns that were identified during the public hearing and written comments received during the comment period.

Comments will appear first, with the agency's response appearing in bold type following. Comments reference the Draft General Permit unless otherwise noted.

1. One commenter states that public notice and comment periods must be required for all site registration applications and submissions of Storm Water Management Programs (SWMP).

**The Ninth Federal District Court in California has remanded the Phase II rule to the Environmental Protection Agency (EPA) on the grounds that the rule must provide for permitting authority review of Storm Water Management Programs (SWMP) to be covered under any general permit for MS4's, the opportunity for a public hearing on each such SWMP, and the public availability of those SWMPs. According to the EPA, the Court action only applies to them and does not apply to**

**the states and therefore DWWM will not require public comment or hearings for SWMP submitted for coverage under the General Permit.**

2. One commenter states that the draft general permit provides for an impermissible self-regulatory system.

**The DWWM disagrees with this assertion. The cited court ruling deals with EPA's permitting approach that utilizes only the Notice of Intent (NOI). The DWWM is requiring the submission of a Site Registration Application (SRA) with the SWMP. The SWMP will be reviewed and approved before the permittee is deemed in compliance with terms and conditions of the general permit. Since the SWMP must be reviewed and approved, the DWWM does not believe that the permitting system is self-regulatory.**

3. One commenter states that the public notice for the draft general permit has been unsatisfactory.

**The DWWM disagrees with this assertion. Class II Legal advertisements were placed in 17 newspapers throughout the state, specifically in the areas potentially requiring coverage under this general permit. DWWM will conduct workshops and seminars to help disseminate information and provide technical assistance to the communities affected by the General Permit.**

4. Page 3, Part II.A. One commenter states that the permit allows too much time to develop and implement SWMPs.

**The DWWM recognizes that the language concerning development and implementation of the SWMPs was not clear. Accordingly, this language has been revised to clearly state that the SWMPs must be developed within 12 months of the issuance date of the permit. Also, the program must be fully implemented within 5 years of the effective date of the permit. As to the time allowed for full implementation of the SWMP, this is consistent with the requirements of the program as established by EPA.**

5. One commenter states that public notice requirements for public involvement and participation are vague.

**The specific requirements for satisfying this minimum control measure were purposely left for the permittee to detail. As previously stated, the DWWM will be reviewing and approving the proposed SWMP. If the proposal does not meet the standards of the state and federal public notice requirements, revision of the SWMP will be required.**

6. One commenter states that the permit does not explain how local runoff control programs will interact with the DWWM's general construction storm water permit.

**The Storm Water Construction General Permit will interact with municipal programs through a system called "Qualifying Local Programs". Communities are required to develop programs that will cover construction activities in their jurisdiction. DWWM will work with local jurisdictions to create sediment control and storm water management programs that meet the basic requirements of the General Permit for Construction and to insure that adequate review and enforcement capabilities are available to effectively implement these programs.**

**The DWWM may then designate a local municipality's storm water quality control program as a Qualifying Local Program. Once the local program is designated, the owner or operator of a construction project will not need to apply for permit coverage under the State's Storm Water General Permit for Construction Activities. The local municipality will be responsible for notifying the developer that they do not need to apply for State coverage.**

**The Division will formally designate the local program but until then most municipalities have or will have some type of local program and both programs will run concurrently.**

7. One commenter states that the list of non-storm water discharges is too broad and its role is unclear.

**The DWWM believes that this list is consistent with those allowed by EPA in its model general permit.**

8. One commenter states that the permit does not specify improvements in harmful storm flows.

**The Phase II Final Rule requires regulated small MS4's to develop implement and enforce a program to reduce pollutants in post-construction runoff to their MS4 from new development and redevelopment projects and this is addressed in Part II.B.4.of the General Permit. Runoff control criteria is not specified in the General Permit, as those need to be developed on a local and/or watershed basis to address pollutant concerns. However, the criteria for new construction would need to be at least as stringent as that specified in the WV NPDES General Permit for construction storm water. Storm water runoff controls are not required for existing development.**

9. One commenter states that the permit is unlikely to result in compliance with water quality standards.

**EPA does not require monitoring in their model draft general permit, as they believe that the implementation of appropriate BMPs will reduce pollutants to the maximum extent practicable and that chemical specific monitoring is not necessary. The DWWM concurs with this approach.**

10. One commenter asked as to what provisions have been made to aid smaller municipalities with the costs associated with implementation of the permit.

**The DWWM is planning to hold a series of workshops to help affected municipalities in preparing their SWMPs and in developing funding sources. Also, a vast amount of material is available on EPA's website.**

11. One commenter asked what rights are afforded the smaller municipalities to enforce ordinances adopted by them to help prevent contamination of storm water prior to entering a storm sewer system.

**Initial investigations have shown that state legislation does provide smaller municipalities the authority to enact and enforce sediment and storm water ordinances. If this is not accurate, DWWM will work with the small MS4s to address legislation that will allow local regulation.**

12. Page 2, Part I.B.2. One commenter asked what the protocol is for determining if any of the allowable non-storm water discharges is a substantial contributor of pollutants. Also, the commenter asked what the prescribed method for removing the discharge would be if it were determined that the discharge is a substantial contributor of pollutants.

**The listed non-storm water discharges are presumed to be non-substantial contributors of pollutants unless water quality monitoring conducted by DEP, the operator, or other parties demonstrates otherwise. If identified as a substantial contributor, measures to eliminate the discharge or to control the pollutants of concern must be addressed by the operator. The appropriate method of removing and/or controlling the discharge may vary and will need to be determined by the operator in consultation with DEP.**

13. Appendix A. One commenter states that the designation criteria contained in Appendix A should be explained more definitively.

**This list is consistent with the criteria suggested by the EPA. This criterion will be used by the DWWM to determine if certain areas of high population density not located in urbanized areas require coverage under the general permit. If a municipality is designated for coverage using this criterion, they will be so notified and an explanation as to why they were designated will be provided.**

The following comments were received from EPA.

The construction storm water general permit includes two special conditions. One concerns facilities discharging to impaired waters under Section 303(d) of the Clean Water Act and the other concerns facilities discharging to a stream where Federally endangered or threatened species or its habitats are present. We recommend that similar special conditions be added to this permit.

**The general permit has been revised to include both of these special conditions as Part III D & E.**

There were also 4 additional recommendations from EPA for minor language change.

**Each of the recommended minor language changes was made as per EPA's request.**

The Division of Water and Waste Management issued the General West Virginia/National Pollutant Discharge Elimination System (WV/NPDES) Permit for Storm Water Discharges From Small Municipal Separate Storm Sewer Systems No. WV0116025 on March 7, 2003. Within 30 days of the issuance date of this permit, anyone who may be adversely affected or aggrieved by the permit terms and conditions may file a Notice of Appeal with the Environmental Quality Board, 1615 Washington Street East, Charleston, West Virginia 25311. Telephone (304) 558-4002.

Thank you for your interest in this general permit.