



west virginia department of environmental protection

Division of Water and Waste Management
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Austin Caperton, Cabinet Secretary
dep.wv.gov

January 10, 2019

Re: WV Permit No. WV0115924
Responsiveness Summary

Dear Commenter,

The State of West Virginia, Department of Environmental Protection (WVDEP), Division of Water and Waste Management (DEP) is proposing to reissue the West Virginia General Water Pollution Control Permit for Stormwater Associated with Construction Activities. This General Permit will authorize discharges composed of stormwater associated with field activities, disturbing one acre or greater of land area, to the waters of the state. It is proposed that this General Permit be issued for a five (5) year term.

The Director of the Division of Water and Waste Management retains authority to require any owner/operator to apply for and obtain an individual WV/NPDES Permit. This authority will be exercised when the Director determines that such individual permit will better protect the receiving water.

The Draft Permit and Fact Sheet was made available to be inspected by appointment between 8:00 a.m. and 4:00 p.m., September 6, 2018 through October 19, 2018, Monday through Friday at the Department of Environmental Protection, Division of Water and Waste Management, Public Information Office, 601 57th Street SE, Charleston, WV 25304.

A public hearing was scheduled to take additional comments on the Draft General Permit. The hearing was scheduled for 6:00 pm to 8:00 pm on October 9th, 2018, at the Coopers Rock Training Room, WVDEP Headquarters, 601 57th Street SE, Charleston, WV 25304. Any person could have submitted oral or written statements concerning the Draft General Permit.

Any interested persons could have submitted written comments on the Draft Permit. Comments were accepted until October 19, 2018.

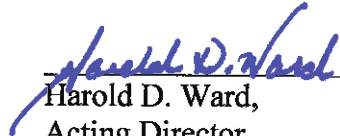
Promoting a healthy environment.

All comments received within this period were considered prior to acting on the Draft Permit.

Notice is hereby given of your right to appeal the terms and conditions of this permit of which you are aggrieved to the Environmental Quality Board by filing a NOTICE OF APPEAL, on the form prescribed by such Board for this purpose, in accordance with the provisions of Section 21, Article 11, Chapter 22 of the Code of West Virginia within thirty (30) days after the date of receipt of this permit.

Thank you for your interest and comments on the WVDEP Construction Stormwater General Permit. If you have any further questions or concerns, please do not hesitate to contact Connie Anderson of my staff at 304-926-0499 ext. 1073 or by email at connie.j.anderson@wv.gov.

Sincerely,


Harold D. Ward,
Acting Director

COMMENT #1: II.H.3.b.9.: This term states, "Confirm all diversions, including clean water diversions will be stabilized prior to becoming functional." It goes on to state, "If necessary, diversions will be used to direct runoff to the trapping structure. Diversions to trapping structures must be stabilized to prevent sediment laden water from leaving the site."

In order to comply with II.H.3.b.9. as written, a site would be required to line all their diversions with RECPs or Rip-rap each day just to be covered up the following day when they resume work. In my opinion, I think the permit should go back to considering dirty water diversions and clean water diversions separately. I think interior project dirty water diversions that convey stormwater to an appropriate treatment device prior to being discharged offsite should not have to be stabilized prior to becoming functional.

DEP RESPONSE 1: G.4.e.2.A.ii.d. – of the 2012 Construction General Permit currently states: Diversions to trapping structures may need to be stabilized prior to becoming functional.

II.H.3.b.9.: *Has been rewritten to state: "All diversions constructed to final grade, including clean water diversions shall be stabilized prior to becoming functional. Internal construction diversions must be stabilized upon reaching final grade." It goes on to state, "If necessary, diversions will be used to direct runoff to the trapping structure. Diversions to trapping structures must be stabilized to prevent sediment laden water from leaving the site."*

Diversions must be stabilized as soon as practical to prevent sediment from leaving the site and to prevent excess siltation of sediment trapping structures due to erosion of newly constructed channels.

COMMENT #2: I.D.2 & Appendix B 4.c.3.: In order to meet the conditions necessary for a permittee to establish the affirmative defense of an Upset, 4.c.3. states that, "The permittee submitted notice of the upset as required in D.2 of Part I of this permit."

I believe it would be more practical, efficient, and a better use of State resources to give construction sites the option to also be able to notify their local inspector in lieu of having to clutter up a valuable emergency response resource like the State Spill Line with flooding jobsites trying to protect themselves every time they are spilling stormwater during a rain event into waters of the State which are likely also flooding. I think the Appendix B 4.c.3. requirements could be improved by giving the permittee the option to notify the local appropriate Director's representative (i.e. local construction stormwater inspector) instead of having to clutter an important emergency response resource like the State Spill Line.

DEP RESPONSE 2: *The spill line is manned to take calls. Inspectors spend their time in the field evaluating BMPs and can't always be available for phone calls.*

COMMENT #3: M. - Upset and Bypass - Appendix B, Section 3 of the Permit defines and prohibits Bypasses, and Section 4 defines Upsets and explains the conditions under which they can be claimed as an excuse for noncompliance. Bypasses and Upsets are more commonly seen in the individual NPDES permits, where permittees are usually operating wastewater treatment systems. For a storm water permit, we expect these terms will be applied differently. For example, as described in the Permit, an Upset could be any failure of a BMP that occurs for some reason beyond the permittee's control, as long as the appropriate steps are taken in accordance Section 4.C of Appendix B. We would appreciate confirmation by DEP of this interpretation.

DEP RESPONSE 3: DEP agrees with this interpretation and has substituted "treatment facility" with BMPs in the sections for Upset and Bypass.

COMMENT #4: Appendix C 35.: Here a Qualified Person is defined as, "a person who is knowledgeable in the principles and practices of sediment and erosion controls, pollution prevention, and possesses the education and abilities to assess conditions at the proposed site that could impact stormwater quality and to assess the effectiveness of proposed stormwater controls to meet the requirements of this permit."

COMMENT #5: Part II.G. Qualified Person to Inspect Erosion and Sediment Control 14. 3rd paragraph of the section states "..., *Basins and traps shall be certified by a registered professional engineer or professional surveyor. Inspections shall occur as soon as structure is constructed and quarterly until removed...*,"

This language is unclear as written and AEP requests clarification. On one hand, AEP reads the language to require that the design of sediment basins and traps must be certified by a registered professional engineer or professional surveyor. Additionally, these features require inspection after installation and quarterly thereafter until removed. This can be understood to mean that the Qualified Person responsible to inspect controls at the site would be required to inspect these features quarterly. In order to adhere with the inspection frequency included elsewhere in the permit, this Qualified Person would already be inspecting these features on a more frequent basis than quarterly. Therefore, it is unnecessary to include the requirement in this section to inspect sediment basins and traps on a quarterly frequency.

If the intent of the language is to require a registered professional engineer or professional surveyor to certify the installation after construction and to perform quarterly inspections, AEP suggests that this would be onerous with no foreseen benefit. The routine inspection frequency by the Qualified Person required by the permit is adequate to ensure that controls, including sediment basins and traps are sufficiently monitored and functioning properly during the course of a construction project. Given that these features are designed by engineers, AEP requests that the requirement for certification by a registered engineer or professional surveyor be removed. If this cannot be accommodated, AEP requests that the requirement be limited to a single documented inspection by a registered professional engineer or

professional surveyor after construction to confirm that the control was installed in accordance with the certified design.

The current WV BMP Manual includes specifications and tables allowing a non-professional to design a sediment trap with a weir outlet. Such BMPs are effective and may become less frequently used due to this comment. AEP proposes the certification apply to sediment basins only, and requests that the BMP Manual (last updated in 2006) be updated to match proposed language for enhanced BMPs and sediment traps/basins.

COMMENT #6: DEP Should Allow a Qualified Person to Inspect Basins and Traps. Part II.G (p. 8) of the Draft CGP requires that basins and traps be certified by a registered professional engineer or professional surveyor. The requirement for certification is included under the heading “Qualified Person to Inspect Erosion and Sediment Controls,” and the paragraphs immediately prior to the basins and traps requirement discusses the need to have a “Qualified Person” inspect the E&S controls. “Qualified Person” is defined, *inter alia*, in Appendix C as a person knowledgeable in E&S controls and pollution prevention, without reference to professional registration.

Although the meaning is not entirely clear because of the Draft CGP uses the terms “inspection” and “certification” in the same permit section, WVMWQA submits that it would be most appropriate to require that a professional engineer or professional surveyor design a basin or trap and that any Qualified Person, not limited to a professional engineer or professional surveyor, inspect the basin or trap to ensure it is performing adequately both before and during the construction activity.

WVMWQA requests that DEP clarify this point by making the following text changes to the third paragraph of Part II.G:

Sediment control structures shall be constructed in accordance with the approved plan (Part II.A.1.c., and A.1.d). Basins and traps shall be designed certified by a registered professional engineer or professional surveyor, and the approved plan shall note the name and firm, as applicable, of the professional engineer or surveyor that designed the basin and/or trap. Inspection of basins and/or traps shall occur by a Qualified Person as soon as the structure is constructed and quarterly until removed. ~~Such certification shall be kept on site on a form, prescribed by the Director and kept onsite during construction.~~

COMMENT #7: The third paragraph of section II.G states “*.., Basins and traps shall be certified by a registered professional engineer or professional surveyor. Inspections shall occur as soon as structure is constructed and quarterly until removed. ..,*”

If the intent of the language is to require a registered professional engineer or professional surveyor to certify the installation after construction and to perform quarterly inspections, WVMA suggests that this would be onerous with no foreseen benefit. The routine inspection frequency by the Qualified Person required by the permit is adequate to ensure that controls, including sediment basins and traps are sufficiently monitored and functioning properly during the course of a construction project. Given that these features are designed by engineers, WVMA requests that the requirement for certification by a registered engineer or professional surveyor be removed. If this cannot be accommodated, WVMA requests that the requirement be limited to a single documented inspection by a registered professional engineer or professional surveyor after construction to confirm that the control was installed in accordance with the certified design.

The current WV BMP Manual includes specifications and tables allowing a non-professional to design a sediment trap with a weir outlet. Such BMPs are effective but may become less frequently used if an engineer's or surveyor's approval is required. WVMA proposes the certification apply to sediment basins only, and with quarterly inspections by a Qualified Person thereafter.

COMMENT #8: Page 8 - II.G. – Qualified Person to Inspect Erosion and Sediment Controls – Paragraph 3 requires basins and traps to be certified by a registered professional engineer or professional surveyor. “Inspections shall occur as soon as constructed and quarterly until removed”. Can the term “certified” be clarified in this requirement? If the intent is for a physical inspection of basins and traps to be completed by a registered professional engineer or professional surveyor upon installation and one quarterly, this requirement is overly burdensome.

DEP RESPONSE 4-8: *The commenters refer to an inconsistency in the permit requirements. The SWPPP must be prepared by a Qualified Person and inspections must be conducted by a Qualified Person. However, the permit also called for certification of construction of basins and traps by a professional engineer or professional surveyor.*

The inconsistency has been resolved with the following rewrite:

Sediment control BMPs shall be constructed in accordance with the approved registration (Part II A.1.c. and A.1.d.). All basins and traps not constructed in accordance with the approved registration shall be inspected and documented by a Qualified Person as affording the same trapping capacity and efficiency as the approved structures. Thereafter, routine inspections of the structures by a Qualified Person shall be conducted in accordance with III.B. until structure removal. All documentation of inspections shall be kept on site during construction on a form prescribed by the Director.

Comment #9: Possessing the "education" cited in the definition above appears to be the key in what certifies somebody as being recognized as a "Qualified Person" in this case. I think the education that certifies somebody to be recognized as a Qualified Person could be better defined by listing some examples of WVDEP recognized certifications like the Certified Erosion, Sediment and Storm Water Inspector (CESSWI) certification through the EnviroCert International, Inc. Program that the WVDEP sends their own construction stormwater inspectors to for example. Is it possible that the WVDEP could conduct a recognized WV/NPDES Construction Stormwater Permit and E&S Control certification course to be recognized as a Qualified Person under this definition? Or could the WV Environmental Training Center conduct a recognized WV/NPDES Construction Stormwater Permit and E&S Control certification course to be recognized as a Qualified Person (ie Waste Water Operator I, II, & III certification requirements)?

COMMENT #10: The proposed permit adds many requirements for a Qualified Person throughout the document. The definition of a Qualified Person is "a person who is knowledgeable in the principles and practices of sediment and erosion controls, pollution prevention, and possesses the education and abilities to assess conditions at the proposed site that could impact stormwater quality and to assess the effectiveness of proposed stormwater controls to meet the requirements of this permit." Will WVDEP allow the permittee to decide who meets these qualifications? If not, how is this determination made?

DEP RESPONSE 9, 10: The permit affords flexibility to the permittee in selecting the "Qualified Person" to prepare the SWPPP and to conduct inspections. This change was made in response to an EPA Permit Quality Review of the stormwater programs implemented by DEP. In future, DEP will investigate the feasibility of offering training courses.

COMMENT #11: AEP feels that enhanced BMPs should only apply to streams with a TMDL that has been developed for sediment, iron, aluminum or some related condition to stormwater runoff. Enhanced BMPs should only be required for Tier 3 streams and 303(d) listed streams, if applicable. AEP believes that basic BMPs are protective of Tier 2 streams, with no evidence presented to the contrary.

COMMENT #12: PAGE 1 – Discharges only into Tier 1 waters will require enhanced BMPs. With Tier 2 being the "default assignment for a waterbody not listed on the state's 303(d) list", enhanced BMPs are likely going to be required more often than not. Followed by the statement that the DEP Director "reserves the right to require Enhanced BMPs for any project". As this is written, it is an overly burdensome requirement and could, or has the potential to, increase all erosion and sediment control requirements on any given project beyond what is practical.

COMMENT #13: Discharges to "Total Maximum Daily Load (TMDL)" Watersheds
The proposed General Permit language states "Within six months of a new TMDL

approval, permittees must incorporate any requirements applicable to their discharges necessary for compliance with the TMDL, into their SWPPP in order to be eligible for continued coverage under this General Permit."

Rather than broadly identify "new" TMDL, the draft should clarify that there are multiple types of TMDLs; some of which may or may not apply to construction activities. For example, the Gauley River Watershed TMDL lists construction activities as a potential source of metals and sediment, which are relevant to the TMDL. However, construction storm water is not listed as a bacteria source in fecal coliform TMDLs.

Dominion Energy suggests that a clarification be added to distinguish the type of TMDL. Where referencing a "new TMDL", we suggest it be specified, "new TMDL applicable to construction activities."

COMMENT #14: The proposed permit imposes enhanced BMPs for all waters other than Tier 1 waters, which are almost every waterbody in the state, since Tier 2 is the default designation. This means that enhanced BMPs will be required almost everywhere. The CAWV requests the WVDEP simplify the permit by requiring basic BMPs for both Tier 1 and Tier 2 streams. We believe that current BMPs are suitable and effective when used and maintained properly. Costs would accelerate if enhanced BMPs are required for virtually all projects.

COMMENT #15: One specific requirement of "enhanced BMPs" is listed in section II.H.3.b.2. This includes inspection every four (4) calendar days at a minimum. This section states "Repairs or maintenance to BMPs shall be performed within 24 hours, however, permittees must implement alternate BMPs during storm events while awaiting repair of the primary enhanced BMP." Our industry would state it is impractical to install anything during a storm event. It could be life threatening to ask an employee to work during severe weather. According to this requirement, someone would have to install additional BMPs in the middle of a heavy rains, including electrical storms.

COMMENT#16: This section requires seeding within four (4) days with no consideration of conditions. This section states "Enhanced BMPs should be selected from the BMP Manual, however, other enhanced BMPs may be approved if equally protective of water quality." The current BMP Manual does not include Enhanced BMPs. Even if a new manual was issued tomorrow, it would be difficult for industry to react to the new requirements and provide education and training by January 2019.

COMMENT #17: F. Enhanced BMPs - Sections I.C and II.H.3.b.2 impose Enhanced BMPs for all waters other than Tier 1 waters, which are almost every waterbody in the state, since Tier 2 is the default designation. (See Section I.C., "Tier 2 is the default assignment for a waterbody not listed as impaired on the state's 303(d) list.") This means that Enhanced BMPs will be required almost everywhere. WVMA feels that enhanced

BMPs should only apply to streams with a TMDL that has been developed for sediment, iron, aluminum or some condition related to stormwater runoff and to Tier 3 streams and 303(d) listed streams, if applicable. We urge that a better definition of waters be drafted, and that the definitions section be made more comprehensive and consistent.

The purpose of BMPs is to protect water quality standards by preventing sediment-laden runoff from entering state streams. Effectiveness of the BMPs depends on selecting those that will be effective, given the physical circumstances where construction is occurring. If that is properly done, enhanced BMPs are unnecessary. Permittees that discharge to streams at levels that comply with state water quality standards, numeric and narrative, are doing what they are required to do, and should not be faced with additional requirements in the form of more frequent inspections or additional controls.

COMMENT #18: DEP Should Authorize Coverage if a TMDL Is Silent on Construction Discharges Part I.C.1 (p. 2) of the Draft CGP does not authorize new sources or new discharges of constituents of concern to impaired waters “unless consistent with the approved TMDL and applicable state law.”

DEP has deleted text from the 2012 CGP (Part G.4.b.6) that required that permittees discharging into a TMDL waterbody with fully subscribed acreage limits comply with effluent limits and discharge monitoring. WVMWQA supports this change as consistent with our earlier comments regarding the 2012 reissuance.

Nonetheless, we are concerned that there may be older TMDLs that do not include dedicated acreage for construction discharges; in that case, the proposed text of the Draft GP would not provide coverage. We acknowledge that DEP states in the Draft Fact Sheet that TMDLs are developed to include some amount of stormwater construction acreage, and that applicants discharging to waters with sediment TMDLs will be required “to operate within the acreage limitations and/or disturbance alternatives as specified in the TMDL.” Draft Fact Sheet, p.7.

However, in our experience, it is possible older TMDLs do not specifically provide for construction stormwater. In such a case, permit coverage should be authorized subject to the permittee addressing the existing TMDL with appropriate best management practices (BMPs).

COMMENT #19: First, there are many TMDLs (for example, for fecal coliform) that are unrelated to earth-disturbing activities associated with construction activities. A construction project that discharges storm water into a stream for which a TMDL was developed for pollutants other than sediment should not be subject to enhanced BMPs if its discharge is not going to contribute to the impairing condition. Consequently, we urge the DEP to clarify that any enhanced BMPs are only required where a TMDL has been developed for sediment, iron, aluminum, or some related condition. For example, Section II.H.3.b.2 should be changed from requiring an updated SWPPP within 6 months of a TMDL, to requiring an update if a sediment or iron TMDL is established for a receiving stream.

COMMENT #20: Second, it is unclear to us what enhanced BMPs are required, or should be required, for discharges to TMDL waters. A review of one TMDL chosen at random, the *Draft Report, Total Maximum Daily Loads for the Hughes River Watershed, West Virginia* (May 2018) ("Hughes River TMDL") suggests to us that compliance with standard BMPs is sufficient to protect even impaired streams. We believe that if regular BMPs are expected to achieve an acceptable TSS level of 100 mg/L, enhanced BMPs will be unnecessary in TMDL waters.

COMMENT #21: Appendix C.14. "Enhanced BMPs" means activity schedules or sediment and erosion controls that are more protective of the environment than those routinely employed to qualify for coverage under this permit. Use of such practices apply when disturbed areas discharge to Tier 2 and Tier 3 Waters, or to state waters for which a TMDL has been approved.

The WVDOH disagrees that enhanced BMPs are necessary for all Tier 2 stream and suggests the following revision:

Appendix C. 14. "Enhanced BMPs" means activity schedules or sediment and erosion controls that are more protective of the environment than those routinely employed to qualify for coverage under this permit. Use of such practices apply when disturbed areas discharge to Tier 2 and Tier 3 Waters and waters designated by the West Virginia Legislature under the West Virginia Natural Stream Preservation Act, pursuant to W. Va. Code §22-13-5. Enhanced BMPs are also advised on projects where traditional BMPs are not sufficient to prevent sedimentation discharges into the receiving waters, or to state waters for which a TMDL has been approved.

COMMENT #22: In Section I.C. the WVDOH believes it is counterproductive and inappropriate to redefine the receiving waters classifications which are already defined in the Code of State Rules 47CSR02. This redefinition could create a legal enforcement problem because the State Code would contradict permit conditions. Using Tier 2 as the default assignment for a waterbody not listed on the 303(d) list is contrary to State Code and therefore should not be used in this manner. The WVDOH suggests that the WVDEP use the definitions in 47 CSR 02.

COMMENT #23: The WVDOH is concerned about the increased costs that are projected with the use of enhanced BMPs on virtually every project in section I.C.1. Traditional BMPs are appropriate and if used and maintained correctly are proven effective. The WVDOH suggests that enhanced BMPs are appropriate for Tier 3 streams and streams designated by the West Virginia Legislature under the West Virginia Natural Stream Preservation Act, pursuant to W. Va. Code §22-13-5. Enhanced BMPs are also advised on projects where traditional BMPs are not sufficient to prevent sedimentation discharges into the receiving waters. The WVDOH believes the permit should include specific information concerning additional conditions that may apply to projects located in the vicinity of a stream with TMDL(s). Construction projects are temporary in nature and should not be treated

as a permanent industrial discharge that has continuous and long-lasting impacts to the water quality.

COMMENT #24: Part III. Requirements during Construction - 28. Part III.B.2. states: At a minimum, the site must be inspected as listed below, unless the site discharges to sensitive waters or the site qualifies for a reduction in the inspection frequency:

At least once every seven (7) calendar days and within 24 hours of the occurrence of a precipitation event of 0.25 inches or greater, or the occurrence of runoff from snowmelt sufficient to cause a discharge.

AEP requests that inspections be allowed to take place after a rainfall event of 0.5 inches or greater by the end of the next work day (i.e., excludes weekends and holidays unless work is scheduled).

COMMENT #25: Part III.B.a.c. requires an increase in inspection frequency for sites discharging to all waters except Tier 1. AEP requests that increased inspections be for only waters with an applicable TMDL and listed as Tier 3. AEP request Tier 2 waters have the following inspection requirement:

At least once every seven (7) calendar days and within 24 hours of the occurrence of a precipitation event of 0.50 inches or greater, or the occurrence of run off from snowmelt sufficient to cause a discharge on next work day (i.e., excludes weekends and holidays unless work is scheduled).

COMMENT #26: AEP also requests that the timeframe provided for repairs or maintenance (Part II.H.3.b.2 and Part III.B.2.f) as a result of site inspections be extended from 24-hours to 3-days excluding weekends and holidays if work is not scheduled. This will allow maintenance crews/contractors time to remobilize to the site, if necessary, as well as secure additional materials when required.

COMMENT #27: Part II.H.3.b.2. Projects discharging to any waters other than Tier 1., The first item states "Inspection of all erosion and sediment controls within disturbed area at least once every four calendar days and within 24 hours after any precipitation event greater than 0.25 inches per 24-hour period."

This requirement creates a burden on sites to perform unnecessary inspections every 4 days. A rainfall event of between 0.25 and 0.5 inches should not be an issue and require an inspection at site within 24 hours if the site is not normally staffed, i.e. weekends and holidays. Currently, after 0.5 inch rainfall AEP conducts an inspection even if when the site is not normally staffed. AEP proposes going back to the previous permit language of an inspection at least once every 7 calendar days and within 24 hours after any precipitation event greater than 0.50 inches per 24-hour period. Additionally, AEP requests that inspections be allowed to take place after a rainfall event by the

end of the next work day (i.e., excludes weekends and holidays unless work is scheduled).

COMMENT #28: The third item states "Temporary seeding and mulching within 4 days when areas will not be re-disturbed for more than 14 days. "

This may not be achievable due to scheduling in advance of other contractors responsible for completing this work. Site work is heavily dependent on weather conditions and either the project can be advancing faster and/or slower than originally scheduled. AEP proposes going back to the previous permit language of "Temporary seeding and mulching within 7 days when areas will not be re-disturbed for more than 14 days, or as soon as possible that site conditions allow for work to be performed safely. "

COMMENT #29: The fourth item states, "*Permanent seeding and mulching within 4 days of reaching final grade*" This may not be achievable due to scheduling in advance of other contractors responsible for completing this work. Site work is heavily dependent on weather conditions and either the project can be advancing faster and/or slower than originally scheduled. AEP proposes going back to the previous permit language of "*Permanent seeding and mulching within 7 days of reaching final grade.*"

DEP RESPONSE 11-29: The Commenters are correct that the draft permit failed to specify sediment-related parameters for TMDLs. This oversight has been corrected. Commenters are concerned about "enhanced BMPs" and the reference to utilizing DEP's BMP manual. Primarily, conducting more frequent inspections in response to rain events, locating BMPs that need maintenance, and following through with the repairs is the heart of "enhancement" along with quick stabilization. Selection of additional filtration devices from the DEP manual, or other manuals is also encouraged.

DEP recently public noticed its intent to reissue its two general permits for stormwater discharges related to construction activities. WV0115924 is authorized by the National Pollutant Discharge Elimination System (NPDES) and the other is a state only permit for stormwater related to oil and gas construction activities, Number WV0116815.

Based on comments received from the public, industry, and for the NPDES permit from the EPA, DEP reviewed each permit in light of its authority for discharge of construction related stormwater into waters of the state.

According to WV 60CSR5, protection shall be applied to all waters of the state.

Tier 1 protection applies to all waters, but other Tiers also apply in some cases. Tier 1 protection applies where the level of water quality is not sufficient to support recreation and wildlife and the propagation and maintenance of fish and other aquatic life, or

where the water quality meets but does not exceed levels necessary to support recreation and wildlife and the propagation and maintenance of fish and other aquatic life.

Tier 2 - A water segment shall be considered a Tier 2 high quality water where the level of water quality exceeds levels necessary to support recreation and wildlife and the propagation and maintenance of fish and other aquatic life. Degradation for Tier 2 shall be deemed significant if the activity results in a reduction in the water segment's available assimilative capacity (the difference between the baseline water quality and the water quality criteria) of ten percent or more at the appropriate critical flow condition(s) for parameters of concern.

Tier 3 Protection applies to Outstanding National Resource Waters (ONRW). In order to protect Tier 3 waters, the agency must determine that the proposed activity will be short term in nature and the changes in water quality will be temporary and limited, before the proposed activity may be authorized. Any proposed activity that would result in a permanent new or expanded discharge upstream of an ONRW segment is prohibited except where such source would improve or not degrade the existing water quality of the downstream ONRW segment.

DEP's approach to construction general permits, whether for NPDES or its state permit follows the same path as EPA's own construction general permit, which relies on BMPs to control the discharge of sediment or sediment-related parameters.

General permits for construction projects are the most effective permitting scheme any state or the EPA has ever conceived.

After carefully reviewing each Tier and confirming general permits are in fact the correct path forward for permitting the largest number of projects, DEP then considered which BMPs are the most appropriate to protect water quality in each of the Tiers.

To meet anti-degradation, EPA calls for more frequent inspection of BMPs to confirm they're working properly. Also, EPA calls for stabilization of disturbed soils to occur sooner. Increased filtration is the final approach EPA identified for protecting these most sensitive waters.

DEP follows EPA's approach. Use of these "enhanced BMPs" will allow DEP to meet its anti-degradation obligations for Tier 2 and Tier 3 waters.

DEP considered the comments received on both permits regarding compliance with Total Maximum Daily Loads (TMDLs). TMDLS are plans that prescribe reductions to load and wasteload allocations which will result in the attainment of water quality standards. Representation of a wasteload allocation for construction stormwater permits has evolved over time. It is the DEP's position that all waters subject to TMDLS

for sediment or sediment related pollutants be assured the same protection through the construction stormwater permits as Tier 2 and Tier 3 waters.

Though its state-only permit is not subject to NPDES influence, state regulation 60CSR5 directs DEP along the path to protecting waterbodies from degradation. WV Code §22-11-2 contained the state's policy on protecting its water and here, in the law, the word "reasonable" is found. "It is declared to be the public policy of the State of West Virginia to maintain reasonable standards of purity and quality of the water of the State consistent with (1) public health and public enjoyment thereof; (2) the propagation and protection of animal, bird, fish, and other aquatic and plant life; and (3) the expansion of employment opportunities, maintenance and expansion of agriculture and the provision of a permanent foundation for healthy industrial development."

DEP determined that both its permits should use the same reasonable approach for anti-degradation of its Tier 2 and Tier 3 waterbodies as well as compliance with TMDLs and that is the use of enhanced BMPs. No other approach is "reasonable".

EPA provides a detailed explanation in their 2017 Construction General Permit (CGP) fact sheet and in the previously issued 2012 CGP fact sheet for using enhanced BMPs.

EPA addresses construction stormwater permitting via a three-pronged approach which includes technology-based effluent limitations, water quality-based effluent limits (WQBELs) and Site Inspection Requirements and frequencies. Although it may sound as if specific limits are assigned to these discharges through technology based limitations or WQBELS, what is addressed in these sections of their permit and explained in the fact sheet are BMP's necessary to stop, minimize, and/or control sediment from leaving the disturbed area and discharging into a stream. These non-numeric effluent limitations are designed to prevent the mobilization and stormwater discharge of sediment or sediment-related parameters, such as metals and nutrients, and prevent or minimize exposure of stormwater to construction materials, debris, and other sources of pollutants on construction sites. Nationwide, source control through minimization of soil erosion is relied on as a pragmatic and effective way of controlling the discharge of these pollutants from construction activities.

Section 3.1 of the 2017 CGP states that "EPA expects that compliance with the conditions in this permit will result in stormwater discharges being controlled as necessary to meet applicable water quality standards".

According to West Virginia's Integration Implementation Procedures, found in 60CSR5, antidegradation involves protecting a stream's designated uses at a Tier 1 level if the stream is impaired for a particular pollutant of concern, keeping high quality streams better than criteria unless a lowering of water quality is justified based on socioeconomic considerations (Tier 2) and providing for only short term degradation of Outstanding National Resource Waters (Tier 3).

As mentioned above, EPA's approach, in the 2017 CGP, to address discharges to a water impaired for sediment or sediment-related parameters, and/or nutrients, or to a water that is identified by the state, as Tier 2, or Tier 3 for antidegradation purposes is to comply with increased inspection frequencies and stabilization deadlines outlined in the permit. As set forth in the EPA permit, the normal inspection frequencies are either to conduct a site inspection once every seven (7) calendar days or conduct a site inspection once every 14 days and within 24 hours of the occurrence of a storm event of 0.25 inches or greater. For a discharge to sensitive waters, EPA requires that the operator must conduct inspections once every 7 calendar days and within 24 hours of a storm event of 0.25 inches or greater. The operator must keep a record of rainfall measured in both instances.

Stabilization measures shall be initiated as soon as practicable in portions of the site where construction activities have temporarily or permanently ceased, but in no case more than seven days after the construction activity in that portion of the site has permanently ceased. It also requires that all erosion controls on the site are inspected at least once every seven calendar days and within 24 hours after any storm event of greater than 0.5 inches of rain per 24-hour period. These standard requirements are more stringent than the standard requirements for the EPA permit and nearly as stringent and protective as the EPA permit requirements to address discharges to waters impaired for sediment or sediment-related parameters, and/or nutrients, or to waters that are identified by the state, as Tier 2, or Tier 3 for antidegradation purposes. The permits would require that additional protective measures be employed at crossings of and in proximity to Tier 3 streams. Additional measures including permanent seeding and mulching must be accomplished within 4 days of reaching final grade; temporary seeding and mulching must be accomplished within 4 days when areas will not be disturbed for more than 14 days; the use of reinforced filtration devices (defined as belted silt retention fence, triple stacked compost filter sock and/or super silt fence) at all downslope perimeters; stream crossings in these areas must be completed within as soon as practicable once the crossing has begun; and disturbance must be limited as much as possible. Additionally, the permit requires all erosion controls in these areas are inspected at least once every seven calendar days and within 24 hours after any storm event of greater than 0.25 inches of rain per 24-hour period.

Since EPA's 2012 CGP fact sheet determined that by imposing on operators that discharge to sensitive waters additional requirements to stabilize exposed areas faster and to conduct more site inspections than other sites does not result in a lowering of water quality, and since the additional requirements to stabilize exposed areas faster and to conduct more site inspections than other sites in the Construction Stormwater General Permit registration in sensitive waters are equal to or more stringent than those used by EPA, it is DEP's position that following the requirements of the Construction Stormwater General Permit registration will not result in the lowering of water quality. Thus, compliance with the Construction Stormwater General Permit will be sufficient to satisfy Tier 2, and the additional controls outlined in the SWPPP associated with this registration, which exceed EPA required controls to satisfy Tier 3

antidegradation, are sufficient to not result in a lowering of water quality, making individualized Tier 2 or Tier 3 review unnecessary.

Further, specific to West Virginia law pursuant to per Section 3.7 of the Antidegradation Rule 60 CSR 5, a Tier 2 review is not required for general permit registrations. Section 3.7 states that “On or after July 2, 2001, the effective date of these implementation procedures, new and reissued WV/NPDES general permits will be evaluated to consider the potential for significant degradation as a result of the permitted activity. Regulated activities that are granted coverage by a WV/NPDES general permit will not be required to undergo a Tier 2 antidegradation review as part of the permit registration process.”

Additionally, as discussed above, the standard requirements in the Construction Stormwater General Permit addressing stabilizing exposed areas and conducting site inspections are nearly as stringent as EPA’s additional requirements that are used to meet a Tier 3 review, which allows no degradation. By implementing these controls on all disturbed area under the permit registration coverage Tier 2 antidegradation is fully addressed and an individual Tier 2 review and its associated baseline water quality is not required.

In waters with approved TMDLs for sediment related pollutants, applicants will be required to employ the same anti-degradation BMPs. In waters listed as impaired with sediment related pollutants, where TMDLs have not yet been developed, applicants will utilize these same controls.

This approach will allow DEP to issue General Permit coverage in areas where the TMDLs are silent on construction discharges. Some sediment related TMDLs reference the General Permit and mention properly installed BMPs. In the case of construction stormwater, such TMDLs may or may not make reference to future growth, which is intended for forested areas. A General Permit approach is incapable of enforcing such diverse approaches, as evidenced by the resounding failure of the 2012 permit, which relegated applicants to a first come, first served system, based on acreage availability.

An across-the-board General Permit approach is effective only expectations are clear and fair to all applicants.

Finally, in response to the comment suggesting DEP is redefining receiving waters classifications, a rewrite in Section I.C. was done to reference the “protections” that are required by 47CSR2.

COMMENT #30: Section II.A.1.f should recognize that contractors often use off-site waste and/or borrow area which are outside of the project owner's legal ability to control. The off-site waste and/or borrow sites should be permitted separately and permit enforcement should apply separately.

COMMENT #31: Page 5 – II.A.1.f. – Offsite waste and borrow areas – As this section is written, requiring these areas to be included in the permit application before the project is bid or a contractor is selected will prove to be difficult and will likely cause sites to be permitted by more than one entity.

COMMENT #32: Section II.H.1.b. requires an explanation of where excavated material will be moved from, and to, on the site. This requirement seems excessive and does not serve any purpose other than a greater potential to setup the contractor for failure to comply with permit conditions or the SWPPP.

DEP RESPONSE 30-32: G.4.e.1.D. of the 2012 Construction General Permit currently requires waste and borrow areas be shown on the Site Maps. The new language has been revised to read:

II.A.1.f - Offsite waste and borrow areas one acre or greater must be included in applications and approved before material may be removed from or accepted at the site. Such areas must be included in the application when associated with single family homes, linear projects, or any other construction project. Offsite waste or borrow sites less than one acre in size that are not contiguous to the construction site must provide sediment and erosion controls and may be included with the application, however, there is no requirement to do so unless otherwise required by the Director.

If a waste/borrow area is not known during the initial application, the registration can still be issued. Once the location of a waste/borrow area is identified it is the responsibility of the applicant to modify their registration to include contiguous area(s) or non-contiguous areas of one acre or more. When the permittee does not have “legally ability to control” non-contiguous areas of one acre or more, the permittee may contact the DEP to inquire if the non-contiguous acre or more has been properly permitted and therefore, a site suitable for waste or borrow. The permittee may also make an inquiry of the party that does have the “legal ability to control” the non-contiguous site if it is properly permitted before accepting material from or sending material to the site.

COMMENT #33: Page 13 – II.H.3.b.7 – Employee Training Program – “Training should address topics such as spill and leak response and internal reporting, good housekeeping, and routine inspection and maintenance. This requirement is overly burdensome and requires permittee to dictate the means and methods of contractors. The liability forced onto the permittee with this requirement is far beyond the intended scope of obtaining a construction stormwater permit.

COMMENT #34: Page 16 – II.I.2.g. – “The GPP must contain a training component wherein the applicant states that employees with the potential to protect groundwater will be trained in prevention procedures”. This requirement is overly burdensome and requires permittees to dictate the means and methods of contractors. The liability forced onto the permittee with this requirement is far beyond the intended scope of obtaining a construction stormwater permit.

DEP RESPONSE 33,34: The training element was a requirement of the 2007 permit, the 2012 permit, and is a requirement of the EPA 2017 Construction General Permit. The permittee has the option of requiring a contractor to become a co-permittee. The DEP cannot be expected to enforce contractual agreements between parties.

COMMENT #35: The WVDOH is very disappointed that the WVDEP is eliminating the Notice of Intent in section II.A.1.d for projects disturbing one to three acres of land. These are normally small projects with small impacts and small potential to negatively impact the waters of the state. After a cursory review of enforcement actions for projects using the NOI, it does not appear to warrant such a drastic change since it appears that very few projects disturbing one to three acres had any significant permit violations. The potential delay of 90 days is another concern. The WVDOH suggests that the WVDEP eliminate the Minor Construction Projects requirements and restore the Notice of Intent requirements except for the one-year limitation.

COMMENT #36: Pre-Construction Requirements- Director's Approval of Minor Projects. The draft introduces language providing "(a) authorization to discharge under this permit occurs upon the Director's approval of the registration application." Thus, some form of express authorization appears to be required from the Director before discharges may commence. This conclusion is supported by the proposed elimination of the Notice of intent form the current (2012) General Permit used to "register a minor construction project (one that disturbs one to less than three acres)." With this change, all projects disturbing one acre or more must submit an application, which will increase WVDEP's administrative burden and potentially cause minor projects to be delayed while awaiting the Director's approval.

Dominion Energy recommends maintaining the current procedure where there are two separate forms, one for one to less than three acres (Notice of intent) and the Site Registration Application form for projects that disturb three acres and greater. Dominion also supports maintaining the procedure that a project that disturbs one to less than three acres, but will have construction activities lasting one year or longer, must file a Site Registration Application form.

COMMENT #37: Elimination of Notices of Intent - Under the current storm water permit for construction activities, a notice of intent ("NOI") to be covered under the Permit is all that is required for sites that are greater than an acre in size but less than 3 acres. The NOI is due 15 days before beginning construction; after those 15 days have passed, construction can begin. Under the proposed Permit, sites of all sizes must submit applications at least 60 days before commencing construction. We do not believe requiring applications for all sites is appropriate and urge the DEP to continue using a NOI for small projects disturbing greater than 1, but less than 3, acres.

COMMENT #38: The CAWV opposes the elimination of the Notice of Intent for projects disturbing 1 to 3 acres of land. Many small development projects, many that

have little to no impact on the waters of the state, would be affected by this change. Adding 60 to 90 days for review of these projects would add more work to WVDEP and discourage future development.

COMMENT #39: Part II.A.1.d. of the draft permit requires documentation to now be submitted as part of the application for small construction projects (those disturbing less than 3 acres). AEP is concerned that this additional workload to review documentation may be burdensome to agency staff and could result in delays in issuance of permit coverage with little benefit given the relatively small areas of disturbance. WVDEP may need to increase staff to ensure the 30-day timeline is met. We therefore question whether the review of SWPPPs for projects of 1-3 acres should be reviewed.

DEP RESPONSE: 35-39: *The comments about the DEP taking 60 to 90 days to review a Minor Construction Project are incorrect. The permit states that the application should be submitted 30 days prior to the anticipated date of construction.*

DEP's experience with the Notice of Intent (NOI) is that the one-year limitation caused many issues for permittees. Many projects could not be completed within the time frame, which meant that the permittees were either operating with expired coverage, or, they had to apply for continuing coverage under the Site Registration Application (SRA). Due to the grading phase exceeding one-year, public notice of the SRA was required.

DEP sought a better permitting approach for these projects and determined that the new Minor Construction Project is the right solution. This permitting approach removes the one-year limitation. As mentioned above, public notice is routine for projects with grading phase exceeding one year, but DEP's Electronic Submission System's Public Query function makes ALL applications available to the public for easy viewing. To keep these smaller, longer-term projects from formal Public Notice requirements, DEP opted to require some details about the BMPs chosen by applicants. Where the former NOI approach asked for no details at all, the DEP as well as the public had no assurance appropriate BMPs were selected.

The new approach is intended to give the permittees more time to finish their projects yet give the Agency and the public reassurance that proper BMPs are utilized on these sites.

COMMENT #40: Section II.H.1.d. states "The SWWP shall contain plans and specifications for each road or access road requiring construction activities within the LOD area. The plans and specifications shall include a map, stationed baseline, appropriate profile and cross sections, gradients, flow patterns, surfacing materials, cuts, fill, embankments, drainage ditches, culverts/water bars, and erosion and sediment structures." The term "SWWP" should be "SWPPP." The section then gives detailed requirements for the design of "Access Roads". This requirement will result in added expense for design. The SWPPP should concentrate on providing erosion

control, not limiting the installation of an access road. Limiting access roads to 15% will unnecessarily add costs in steep terrain.

The definition for Access Road "means surface right-of-way for purposes of travel by land vehicles and/or equipment used in Construction activities. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side areas, approaches, ditches, and other related structures. The term includes access roads constructed, used, reconstructed, improved, or maintained for use in all construction operations." This definition includes all haul roads within the site. It would be impossible to anticipate or design every haul road. It would be impossible for every haul road to meet the design requirements included for "Access Roads".

DEP RESPONSE 40: II.H.1.d. The SWPPP typo will be corrected. If the maximum pitch grade of 15% or less is not practical based on-site specific conditions, then alternative design criteria for access road drainage may be approved by the Director.

The SWPPP concentrates on providing sediment and erosion control. Access roads are a major source of sediment in the State of West Virginia. Roads can dramatically change the hydrologic conditions of the immediate watershed. Roads that are improperly designed, constructed and stabilized can cause significant erosion and produce vast quantities of sediment.

Proper construction of roads will not add expense for design. Since roads are typically long-term features, cutting costs during the construction phase almost always costs more in the long run as maintenance costs will be significantly higher on improperly designed and constructed roads.

To control sediment from roads it is necessary to practice aggressive erosion control. The single most important thing to do when designing and building a road is to control the water. Running water down a road can cause long-term erosion and increase maintenance costs.

COMMENT #41: "Section II.H.1.b. Estimates of the total area of the site, the part of the site that is expected to undergo excavation or grading, and the total amount of excavation by cut and fill shall be fully described with an explanation of where excavated material will be moved from, and to, on the site." It is impractical for a designer or permit writer to describe the sequence of every earthmoving activity. The construction plans depict the work to be constructed. The SWPPP should address measures to contain erosion and siltation without dictating how the work is performed. Every contractor will have a different means and method of executing the work.

DEP RESPONSE 41: DEP is simply asking the SWPPP Preparer to describe the general sequence of cut and fill and provide that information. The cut and fill must be properly delineated and calculated to address measures to contain erosion and sediment control plans.

COMMENT #42: Section II.H.1.b also requires the submission of "Cross sections that accurately depict the surface configuration at any project area proposing a fill. Show measures to be taken to reduce the potential for subgrade saturation and ensure stability of fill areas. The cross-section shall be developed from sufficient slope measurements to adequately represent the existing land configuration of the proposed project area. Identify fill slope lines, original ground line, proposed keyway cut or rock toe key, drainage provisions and/or alternates." Stability of fill areas is a geotechnical engineering requirement that is not stormwater pollution prevention. No parameters are given for the evaluation of the submitted information.

DEP RESPONSE 42: Stability of fill areas is a geotechnical engineering requirement as well as a stormwater pollution prevention issue. Fill slope failure can have tremendous environmental consequences. Adequate drainage of water is the most important element of a slope stabilization scheme. Dewatering a critical slope is usually simple, cost efficient and will potentially provide an effective means to stabilize a slope and prevent slips.

COMMENT #43: Part II.I. Groundwater Protection Plan (GPP). The draft general permit requires the submittal of a Groundwater Protection Plan (GPP). AEP requests clarification that it is still sufficient to submit WVDEP's Generic Groundwater Protection Plan for Construction Sites.

If the " WVDEP's Generic Groundwater Protection Plan for Construction Sites" is not acceptable, the development of a GPP will require additional resources to address a minimal risk of a release due to the sites having developed a SWPPP that address any leaks or spills from a project. AEP requests WVDEP to provide a new template or confirm the existing template is satisfactory for meeting the GPP requirements.

DEP RESPONSE 43: A form on which to submit the elements of the GPP will be provided on the Electronic Submission System application for coverage under this general permit.

COMMENT #44: Groundwater Protection Plan (GPP). The current General Permit specifically states the GPP is not required to be submitted to WVDEP for review. The proposed permit should include a similar statement.

COMMENT #45: The CGP Should Apply to Surface Water Discharges Only
The Draft CGP adds requirements to the 2012 CGP to: (i) prepare and submit a Groundwater Protection Plan (GPP) before construction begins (p. 15-17) and (ii) include procedures in the SWPPP for how the permittee will handle fuel, oil, etc. "to prevent any from entering stormwater runoff or affecting groundwater adversely." (p.13). These new

requirements increase the risk that regulators or third- parties will claim non-compliance under a federal permit for violating what are purely state law requirements.

If DEP retains the groundwater references, WVMWQA requests that the Department add the following savings language to Appendix A to clarify that groundwater references are based solely on state law and are not subject to federal Clean Water Act enforcement:

- x. State Law References. State law references (both statutory and regulatory) are included in this permit, however they are not incorporated by reference, nor are they meant to serve as mandatory permit requirements for purposes of enforcement under the federal Clean Water Act or associated federal regulatory provisions.

COMMENT #46: B. Application of the Groundwater Protection Act to the Permit. The Permit requires the development of Groundwater Protection Plans ("GPPs"). They cannot be a component of Storm Water Pollution Prevention Plans ("SWPPPs") (*see* Section II.I.1) but the requirements of the GPP can be incorporated in the SWPPP by reference. See Section II.J. The Permit should be revised to remove requirements related to the GPP, or the permit should be revised to allow a single document that addresses storm water contamination that goes into the ground or flows over it.

As a practical matter, there is no need for GPPs where SWPPPs are required. Both are directed to prevention of contaminated stormwater, through contact of precipitation with on-site contaminants. GPPs are redundant, as they apply to earth-disturbing activities, because they mimic the run-off control requirements of the SWPPPs. Groundwater contamination is prevented by proper application of storm water controls on surface water runoff, which prevents contamination of water that runs into groundwater. SWPPPs are more than adequate for prevention of contamination of surface water or groundwater.

If the DEP is concerned about sediment-laden groundwater being transported underground to karst terrain, through sinkholes, we urge the DEP to address that particular situation through the SWPPP, and not require a GPP for all locations.

To the extent the DEP continues to require a GPP, it should note that it is a state-only program that is not required by the federal NPDES program, and therefore it is not a federally-enforceable NPDES permit condition.

DEP RESPONSE 44-46: DEP agrees groundwater protection is required by WV state law. 22-12 gives authority and 47 C.S.R 58 (Groundwater Protection Regulations) in section 4.12.c., says the GPP is to be submitted and reviewed as part of the facility's or activity's permit application or renewal process.

22-12 offers protection for permittees who are in compliance with Groundwater Protection, "Where a person is operating a source or conducting an activity in compliance with the terms and conditions of a permit, rule, order, directive or other

authorization issued by a groundwater regulatory agency pursuant to this article, such person is not subject to criminal prosecution for pollution recognized and authorized by such permit, rule, order, directive or other authorization.”

The DEP will provide a GPP form in its Electronic Submission System.

COMMENT #47: We believe the notice process was flawed in the following ways, and request DEP provide a response how these flaws will be corrected.

1. No electronic notification.
2. No record of the notice on DEP’s public notice webpage.
3. No information on DEP’s News Page.
4. No date on the public notice.

DEP RESPONSE 47: The DEP published the required Public Notice Advertisement in newspapers around the state. DEP also placed copies of the Public Notice and Public Hearings, Draft General Permit, and the Fact sheet on their website. This information can be accessed at the following:

<https://dep.wv.gov/WWE/Programs/stormwater/csw/Pages/cswdocs.aspx#CSW%20docs>

A Public Notice Advertisement in the newspaper is the legal requirement.

COMMENT #48: While we agree with the enhanced Best Management Practices and increased frequency of inspections, we see there are more steps that can be taken to reduce erosion and sedimentation in streams and recommend the following:

1. Enhanced BMPs should also be required in karst terrain. Sediment laden water leaving the construction site is more likely to impact groundwater in karst terrain.
2. The permit should include a requirement for monitoring turbidity. WV Water Quality Standards include criteria for turbidity. The permittee should be required to conduct frequent monitoring for turbidity to show compliance with the state standards.
3. Permit fees should be increased. The amount of DEP staff time needed to oversee these large-scale pipeline construction projects is immense. Permit fees should be increased to reflect the agency’s resources needed to regulate the projects.
4. Fines for violating the permit should be increased. The amount of the fine should be such that it deters the company from violating permit conditions. Additionally, language should be included in the permit to explain the threshold of permit violations that will warrant a cease and desist order.

DEP RESPONSE 48: The Director reserves the right to ask for any additional information to ensure that water quality standards are being met. Please see Response 11,12,13,14,15,16,17.

Fees are established by the state legislature.

Fines are outlined in §22-11 and would require changes from the state legislature.

Cease and desist orders are evaluated on a case by case basis.

COMMENT #49: DEP Should Retain Existing allowable Discharges Part I.F (p. 3) of the Draft CGP states that “All discharges authorized by this permit shall be composed entirely of stormwater.” The Draft CGP deletes text from the 2012 CGP that lays out exceptions to this general rule for discharges from emergency firefighting activities, fire hydrant flushing, vehicle washing (if not soaps, solvents, or detergents are used), etc.

Although the Draft Fact Sheet (p. 14) suggests that these non-stormwater discharges are still acceptable (“A few examples of an allowable discharge are lawn watering, fire hydrant flushing, and landscape irrigation...”), the Draft CGP does not include any text to authorize this limited and critical subset of non-stormwater discharges from construction sites. WVMWQA requests that DEP retain the exceptions text from the 2012 CGP back to the Draft CGP.

COMMENT #50: AEP requests that the language in Section G.2 of the current permit related to allowable non-storm water discharges such as discharges from emergency fire-fighting activities and non-turbid discharges of groundwater be included in the new permit. There is occasional need for benign non-storm water discharges that are specifically allowed under the current permit and are customarily acceptable under the general storm water permit construction program.

COMMENT #51: With regard to Part I.G. Prohibition of Discharges WVMA requests that the language in Section G.2 of the current permit related to allowable non-storm water discharges such as discharges from emergency fire-fighting activities and non-turbid discharges of groundwater be included in the new permit. There is occasional need for benign non-storm water discharges that are specifically allowed under the current permit and are customarily acceptable under the general storm water permit construction program.

DEP RESPONSE 49-51: The permit authorizes stormwater discharges during construction activities. DEP can work with individual applicants to provide guidance regarding other discharges into waters of the state.

COMMENT #52: Failure to Pay Fees Should Not Be Considered Operating Without a Permit Part II.D.2 (p. 22) of the Draft CGP states that discharging stormwater under the CGP “while failing to pay fees is considered operating without a permit.” WVMWQA objects to this text as overly stringent. The proposed text suggests that

submitting a fee a few days late, for example, could subject the permittee to allegations of discharging without permit coverage until the fee is paid. The proper approach should be to notify the permittee that permit coverage will be terminated if fees are not paid by a date certain. This is much fairer, and will give the permittee the opportunity to quickly remedy a financial situation without facing potentially serious enforcement action. WVMWQA requests that DEP delete Part II.D.2 from the Draft CGP.

DEP RESPONSE 52: The DEP does give permittees a notification to pay fees. In fact, invoices are issued the month before the annual fees are due. Late notices are issued 60 days later. The authority given to the DEP in 47CSR26 §3.5.1 states that permits can be voided at 90 days for unpaid fees. Businesses that are not paid on time could hardly be expected to survive. DEP is the same. The fees should be paid on time, or at the very latest, prior to permit void.

Comment #53: NPDES Permits Are Only Required for Point Source Discharges. The Permit is issued in accordance with the National Pollutant Discharge Elimination System, established under the Clean Water Act, which is implemented by the DEP through a memorandum of agreement with US EPA. As such, it may regulate discharges of pollutants through point sources, into waters of the United States. Waters of the United States, while still the subject of much debate, generally are not deemed to include groundwater, or streams with no significant nexus to navigable-in-fact streams. Unless there is a discernable point source running from a project into a water of the United States, the DEP has no authority to regulate the construction activities under the NPDES program. We urge the DEP to acknowledge that fact in the Permit.

DEP RESPONSE 53: DEP gets its authority from state law Chapter 22, Articles 11 & 12. This permit does not regulate construction activity under NPDES Program. This permit authorizes interested persons to release stormwater during their construction activities via point sources into waters of the state. As the comment referred previously, this permit regulates point sources for the construction activity discharges, which has potential to release pollutants into waters of the state.

COMMENT #54: Our members operate in good faith, using BMPs that the DEP has approved in SWPPPs to protect water resources. If it is discovered-- through no failure or negligence on either party-- that water quality standards maybe violated despite use of appropriate BMPs, it should not be deemed a Permit violation, but a reason to investigate the cause and extent of the effect on water quality and, where necessary, impose additional protective measures.

DEP RESPONSE 54: The DEP wrote the permit to be as supportive as possible with this commenter's position. A Qualified Person must prepare the SWPPP and conduct inspections. The permittee must respond to issues identified during inspections such as repairs of BMPs. A permit cannot authorize violations of water quality standards, but permittees who operate in good faith by complying with the permit have a strong chance of meeting standards.

COMMENT #55: Part II.F. Installation of Erosion and Sediment Controls. This section needs to clarify that installation of erosion and sediment controls must be installed before upslope disturbance is started. This approach is consistent with phased construction projects.

COMMENT #56: Section II.F on Erosion and Sediment Controls should be revised to clarify that erosion and sediment controls must be installed before upslope disturbance is started. This approach is consistent with phased construction projects.

DEP RESPONSE 55,56: DEP agrees with this comment and has revised the wording to read: After receiving authorization from the Director and before beginning construction activities, the permittee shall install erosion and sediment control BMPs in accordance with the approved application. BMP's shall be in place and functional prior to upslope or any land disturbance is initiated. For projects proposed to be completed in multiple phases, the BMPs for each Phase must be constructed and functional prior to disturbance beginning in that Phase.

Comment #57: Prohibition of Discharges of Hazardous Substances - Section II.H.3.a requires the applicant to include a statement of what fertilizers, herbicides and pesticides may be used on site. Such chemicals may be useful in promoting re-vegetation, but it is impossible to apply them without some amount running off with storm water. Since most fertilizers or herbicides would contain substances that might be deemed "hazardous substances", the discharge would be in violation of Section I.D.3, which mandates that "in no case, shall the discharge(s) contain a hazardous substance." We suggest that the Permit allow trace amounts of hazardous substances if they are commensurate with the normal application of herbicides, pesticides and fertilizers that are appropriate for vegetative growth.

DEP RESPONSE 57: The permittee should follow guidelines provided by manufacturer of the subject products. The SWPPP/GPP should describe how the products will be stored and how onsite personnel will respond to spills.

COMMENT #58: H. - Public Notice Requirements - The DEP's public notice requirements (*see, e.g., Sections II.A.1.b*) are the same as those the DEP has established for permit issuance. *See* 47 CSR 1-12. We are not aware of any rules requiring public notice for applications for coverage under a general permit, once the general permit has been finalized. Despite this, public notice requirements for coverage under the Permit are similar to the public notice requirements that apply to issuance of the Permit itself. We believe this is wrong.

The purpose of a general permit is to establish general conditions that apply to similar types of discharges that are protective of the environment. Those that can operate within the requirements of the permit are allowed to do so. Such persons are not applying for a permit, they are applying for coverage under a permit that has already been reviewed,

subject to public comment, and approved. The full public notice process need not start again with each coverage for application.

If the DEP wants to develop notice periods for coverage under the Permit, that would not be unreasonable. But there is no reason to slavishly follow the notice requirements in 47 CSR 10. Shorter time periods for coverage should be allowed.

COMMENT #59: The WVDOH believes that Public Notice Requirement in section II.A.1.b for projects of three acres or more where the grading and stabilization phase lasts one year or longer is an unnecessary burden and delay. The general public has the right to view any public document at any time. The conditions for the WV/NPDES Permit have already met the public notice threshold and therefore additional public notices for normal projects is an unnecessary waste of time and money. If the WVDEP will not eliminate this condition at least consider an exemption for projects that have already included public notice and/or public involvement. This requirement looks as though it could create up to a 100- day delay for the registration and another 100-day delay for the review of the contractor's Stormwater Pollution Prevention Plan and the contractor's Groundwater Protection Plan. These delays could have a significant impact on the State's Infrastructure Bond Programs which often contain strict time limitations for project awards and completions.

DEP RESPONSE 58,59: DEP uses formal public notice for three criteria: for Tier 3 anti-degradation; for Large Construction Projects with a grading phase lasting a year or longer, or when 100 or more acres will be disturbed.

The specific reason for this is that construction activity's impact on stormwater is considered short term impacts, therefore, public notice of the General Permit itself satisfies the mandated public notice requirements.

For Anti-degradation purposes, however, certain larger projects or those that are not short term, or those that directly discharge to streams that require Tier 3 Protection would require individual permitting. DEP issues General Permit coverage for such projects, but only when public notice requirements are met.

COMMENT #60: I. - Maintenance Activity - We would urge the DEP to provide for coverage under the Permit for all maintenance activities-- such as road re-grading and gravel placement-- that is done in accordance with the original storm water permit. Such maintenance activities, which were originally reviewed and approved by the DEP, should not require a full-fledged permit review.

DEP RESPONSE 60: The permit only is required during site development. DEP does address post-construction stormwater management in this permit.

COMMENT #61: Section II.H.1.c. requires that the "...Post-construction peak discharge must be less than or equal to the pre-construction peak discharge for the 1-

year, 24-hour storm..." This is not always possible nor are discharge increases always damaging. The WVDOH suggests the following revision: "... If post-construction peak discharge is 10% (or more) greater than the pre-construction peak discharges of 5 cfs or more for the 1-year, 24-hour storm, post construction stormwater management BMPs must be implemented to reduce potential erosion. Calculations and justification must be submitted if post-construction stormwater management features are deemed unnecessary..."

COMMENT #62: J. - Peak Discharge - The Permit is the proper means for protecting the water quality in receiving streams. That may require control of stormwater velocity from construction sites, to prevent scouring and excessive erosion. However, there is no reason to prohibit post-construction peak discharges that are in excess of pre-construction discharges, as provided in II.H.1.c. Absent a connection between the discharge velocity and water quality, the DEP has no authority to control post-construction runoff. There are other means for doing so, such as county and city ordinances, or nuisance lawsuits.

COMMENT #63: Part II.H.1.c. Evaluation Point Selection - 18. AEP requests the new language requiring that post-construction peak discharge be less than or equal to pre-construction peak discharge for the 1-year, 24-hour storm, be removed from the permit. The intent of this requirement is not specified and it seems arbitrary and overly prescriptive to apply this same requirement in all disturbance situations whether or not a risk is posed by the increase in discharge, and given that some increases are so small as to be inconsequential. If the intent is to minimize flooding or prevent excessive erosion, AEP suggests that the inspection and control requirements already required by the permit are adequate.

DEP RESPONSE 61-63: DEP agrees with Comment #61 which made a reasonable recommendation that addresses all three comments. The suggested change has been made. The purpose of II.H.1.c. is to more fully explain the 2007 and 2012 permit requirements for the calculation. The purpose is to prepare the way to termination of permit coverage. By planning ahead, permittees can completely stabilize their sites, including the discharge points. Scouring (of receiving streams) as mentioned in Comment #62 can be avoided, thereby speeding up the termination process.

COMMENT #64: Section II.H.1.d. attempts to dictate design criteria for roadway construction. The WVDEP does not have legal authority over design and construction means and methods. The WVDEP does have authority over pollution prevention and control. The WVDOH suggests the following revision:

- Each construction access road shall include ~~be designed with the following specifications:~~
- Stone access entrance and exit drives.
- ~~Parking areas to reduce the tracking of sediment onto public or private roads.~~
- ~~All unpaved roads on the site shall be graveled or have other durable surface~~
- ~~The maximum pitch grade shall not exceed 15%.~~
- ~~The surface shall pitch toward the ditch line at a minimum slope of 2% to~~

~~4%. A road located in an area that doesn't have hillside runoff may be crowned with a minimum slope of 2% to 4% from the center line.~~

- ~~• A ditch shall be provided on the inside of any road having hillside runoff, with ditch relief culverts and/or water bars spaced according to grade and installed wherever necessary to insure proper drainage of runoff water beneath or through the access road.~~
- ~~• Ditch lines shall be capable of passing the peak discharge of a 10-year, 24-hour precipitation event.~~
- ~~• Ditch relief culverts shall be capable of passing the peak discharge of a 2-year, 24-hour precipitation event and placed at a spacing using the formula: $400/\% \text{ grade} + 75' = \text{culvert spacing}$.~~
- ~~• Sediment control shall be provided at the inlet by sumps, rock checks, or equal structure and the slope at the outlet end shall be protected with an apron of rock riprap, a water energy dissipater, or other similar structure.~~
- ~~• Alternative erosion and sediment control implementation may be approved design criteria for access road drainage may be approved by the Director.~~

DEP RESPONSE 64: These minimum design standards are directly related to storm water runoff velocity and sediment and erosion control, thus are regulated under this permit.

COMMENT #65: K. - Fugitive Dust - A NPDES permit is not the appropriate place to control fugitive dust, as is proposed in Section II.H.4, fourth bullet point.

DEP RESPONSE 65: Fugitive dust results from dry conditions where there is insufficient moisture content in the ground to hold the soil together. Particulate matter (PM) then enters the atmosphere through the action of wind, vehicular movement, or other activities. Dry and disturbed surfaces can release wind-borne fugitive dust for many months before there is sufficient rainfall to coagulate the soil. This is an erosion control issue that must be addressed in in the NPDES Storm Water General Permit for Construction Activity. This is also a requirement of the USEPA 2017 Construction General Permit and therefore must be addressed.

COMMENT #66: L. - Permit Modifications - Part II.C. regarding incomplete applications is in need of revision. WVMA requests the first sentence “.., does not meet one or more of the minimum requirements of this permit.” be revised to ...”does not meet one or more of the specific minimum requirements of this permit.”

The Permit should distinguish between amendments that require a permit modification, in accordance with Section 12 of Appendix A, and the changes that can be done using the DEP's forms in accordance with Section II.C.2. However, Part II.C.2. seems to be out of place at least in part since it references activities which occur during construction and not submitting an application.

DEP RESPONSE 66: The change recommended in Comment #66 is simple, therefore, the word “specific” now precedes the word “minimum”.

DEP believes the current wording in Part II.C is adequate. DEP agrees that Part II.C.2 can be deleted from this Section as the wording is also located in Section III.B.2.f.

The permit affords flexibility for modification without making a formal application. Minor adjustments may be noted in the records kept at the site. The Director's field staff may approve modifications, and finally, formal modifications may be done through applications. Specially, moving to an area that drains to a Tier 3 water, extending the grading phase of a Large Construction Project beyond a year, or adding acreage so that the project will disturb 100 or more acres should be formally addressed through a modification to the registration.

COMMENT #67: N. - Removed Substances - We suggest that the DEP remove Appendix B, Section I.5, Removed Substances. This provision makes some sense in industrial NPDES permits, where there might be substances in wastewater treatment sludges that require special handling and disposal. That is not the case here, where the removed substances are going to be sediment and dirt, generated during clean out of sediment traps and retention ponds. Disposal of sediment should be allowed in any manner that does not result in a violation of water quality standards.

We suspect that this condition is honored more in the breach than in the observance, and that it serves no environmental protection role. At the least, we suggest that an exception be added, allowing the disposal of earth that is removed from sediment control structures where there is no reason to believe that there is anything other than sediment being removed.

DEP RESPONSE 67: Sediment removed from trapping devices, or recovered from offsite, should be placed upland of sediment trapping devices. Removed substances on a construction site might be soils impacted by fuel oil spills or leaks from heavy equipment. Granted, the language is definitely relevant to other NPDES permit types, but is sufficient when considering the types of substances that might need removed from a construction site.

COMMENT #68: The draft permit references the signature requirement to Appendix A.7. in numerous locations. The signature language is in Appendix A.6.

DEP RESPONSE 68: DEP agrees with this finding and has made the appropriate changes.

COMMENT #69: Site development often includes pre-construction activities that do not disturb the ground and therefore are not required to be covered under the construction storm water general permit. The introduction page of the new permit currently states:

Construction activities are land disturbing operations such as clearing, grubbing, grading, filling and excavation operations during site development for residential, commercial or industrial purposes.

To further clarify covered construction activities, AEP recommends adjusting this language as follows:

For purposes of this permit, construction activities include any clearing, grubbing, grading, filling and excavation operations that result in ground disturbance of one or more acres during site development for residential, commercial or industrial purposes.

DEP RESPONSE 69: The comment is unclear. The permit applies only during site development and is limited to projects of one or more acres. Further, if land is not disturbed, the permit does not apply.

COMMENT #70: Section 1.C. Water quality requirements for Tier 2 waters should not be more restrictive than the EPA General Permit. AEP suggests DEP provide an interactive GIS based map of waters in the State to allow a permittee to locate their project and determine status of receiving channels for 303(d) list and TMDL status.

DEP RESPONSE 70: In the ESS application, Section 6, after the latitude and longitude is provided, if the applicant clicks on "Interactive Mapper", impaired streams, Tier 3 streams, and TMDL areas are identified and available for the applicant's consideration.

DEP's TAGIS group is also working on a stand-alone application to display sediment related TMDL/303(d) location information.

Also, please see response to comments #11-29

COMMENT #71: AEP notes that the draft permit specifies that sites approved from January 3, 2017 thru November 30, 2018 are granted coverage under the new permit. AEP appreciates continued coverage for such projects without the administrative burden of resubmitting an application form. Given that the effective date of the new permit is not certain and some projects may be permitted between November 30th and the effective date of the new permit, AEP requests that the specific date of November 30, 2018 be replaced with "the effective date of the permit" as follows:

Sites approved from January 3, 2017, thru the effective date of this permit are hereby granted coverage under General WV/NPDES Water Pollution Control Permit WV0115924

DEP RESPONSE 71: This comment is referring to a practice known as "roll-over". The purpose of roll-over is fairness. The general permits are issued for 5 years, but applications submitted late in the permit term are subject to the expiration date of the permit and may only get coverage for a very short time frame. To compensate for brief

coverage, rollover gives permittees more time to complete their projects without having to immediately apply for coverage under the reissued permit.

After reviewing the draft permit, EPA took exception to rollovers.

The EPA approach is to reissue their permit and give a deadline for applying under the new permit, regardless of how little time was approved for a project under the expiring permit. DEP disagreed with EPA's strategy and the two agencies compromised.

DEP will require existing permittees who were issued "rollover" approvals to submit a certification agreeing to abide by the terms and conditions of the reissued general permit. Certifications will not impose fees and will only require updated progress maps in PDF form. If no land disturbance has taken place, the progress map is not necessary.

Further, the DEP agrees to the recommendation to extend this option to registrations issued through the effective date of the reissued permit.

COMMENT #72: AEP has a large number of electric power line projects taking place in West Virginia and frequently obtains coverage under the construction storm water general permit for planned projects as well as emergency power restoration projects. These projects typically have aggressive schedules in order to meet mandated reliability of the electric grid or to ensure uninterrupted service to our customers. The draft permit contains significant changes that could result in substantial redesign such as new access road requirements, as well as more onerous inspection and certification requirements. Consequently, the changes in the draft permit could have significant impacts to budget and schedule for projects that are in advanced stages of planning, detailed design, or execution. These changes could require redesign, re-budgeting, as well as potentially impacting project implementation particularly for projects currently permitted, under construction, or with awarded construction contracts. As a result, AEP requests the following:

Projects currently designed and permitted under the conditions of the current permit and seeking continued coverage should not be required to meet the new conditions of the permit.

Projects not yet permitted but where design has been substantially completed and which are currently well into the project execution phase (e.g., where construction bids have been requested, where contracts have been awarded, final access road disposition arrangements have been made with landowners etc.), should not be required to meet the new design requirements, access road abandonment requirements, and new post construction peak discharge requirements for the 1-year, 2-1-hour storm contained in the new permit. AEP is concerned that reconsideration of these significant aspects will result in untenable impacts or delays to a project and result in increased costs and is therefore infeasible. We propose to document the infeasibility of such significant changes in the SWP3 for such projects.

DEP RESPONSE 72: Please see response to comment #71 for existing projects. As to projects that have not been submitted to DEP, it is not within the ability of the permit to authorize discharges related to future projects for which there is no application for the DEP to review.

COMMENT #73: AEP requests language be included that existing permits being renewed that were required to be public noticed under the current permit do not have to be re-public noticed when a renewal application is submitted for the same project.

DEP RESPONSE 73: DEP does not require public notice of renewal applications that were previously public noticed prior to original issuance. Public notice would be appropriate if a renewal application contained a modification that triggers public notice, such as a site that previously disturbed 90 acres being expanded to 120 acres.

COMMENT #74: Part II.C. Incomplete Applications - AEP requests the first sentence in this section be revised from "... does not meet one or more of the minimum requirements of this permit." to "...does not meet one or more of the specific minimum requirements of this permit." AEP further requests that project review comment letters specify the permit requirement that is not being met by the application for each comment for clarity and consistency.

DEP RESPONSE 74: DEP believes the current wording in Part II.C is adequate. DEP agrees with the commenter to cite the permit requirements in review requests.

COMMENT #75: Part II.C.2. seems to be out of place since it references activities which occur during construction and not when submitting an application.

DEP RESPONSE 75: DEP agrees that Part II.C.2 can be deleted from this Section as the wording is also located in Section III.B.2.f.

COMMENT #76: AEP notes that compliance with the proposed permit language requiring that construction activities only begin after the Qualified Person inspects and finds all erosion and sediment controls installed properly may not be possible due to the necessary sequencing of certain construction activities. For example, at times initial access related construction activities in a new project area must begin in order to transport equipment and install controls into the area. In such situations, construction activities and installation of controls generally happen nearly simultaneously. Given the routine inspection frequency required by the permit, AEP suggests that controls are adequately inspected within a very short period after installation and therefore risk associated with inadequate controls is minimized. AEP

requests that the following language be deleted from the permit:

Construction activities may begin after the Qualified Person inspects and finds that all erosion and sediment controls are installed properly.

DEP RESPONSE 76: It appears the commenter is referring to the inspection of the controls. If the concern is that equipment moves and construction might occur prior to the Qualified Inspector showing up for a "routine inspection", then the DEP suggests that the inspection is not routine. It is a critical inspection since the controls are the very pollution prevention techniques the permit depends on.

COMMENT #77: Part II.H.1., the last sentence should read "..., measures to be initiated shall..,".

DEP RESPONSE 77: Your comment has been acknowledged and the change has been made.

COMMENT #78: The WVDEP is requiring a shapefile or AutoCAD drawing in WGS84. The WVDOH does not design or survey in latitude / longitude which is the basis in WGS84. The WVDOH uses State Plane US feet NAD 83. The WVDOH believe this change is an unnecessary burden. The WVDOH suggests the WVDEP revise the language to "The project shall be illustrated in an ArcGIS Shapefile (.shp) or in an AutoCAD Drawing (.dwg).

DEP RESPONSE 78: DEP agrees and the language is modified as follows: "The project shall be illustrated in an ArcGIS Shapefile (.shp) or in an AutoCAD Drawing (.dwg)."

COMMENT #79: Part II.H.1.a. Maps - 16. Maps have to be ARCGIS Shapefile (.shp) or AutoCAD Drawing (.dwg) in World Geodetic System (WGS) 84.

AEP requests that ARCGIS or AutoCAD drawings not be required for modification applications where an area of less than 3 acres is being added to a project. Due to site conditions, additional area may need to be added as soon as possible to prevent delays in the project. Waiting on drawings with the new limits of disturbances to be generated in the required format could delay the submittal of the modification application.

DEP RESPONSE 79: Accurate depiction of the approved permit boundary is essential for a complete review of the project. For example, this shapefile/autocad boundary allows permitting staff to identify sensitive areas and environmental enforcement to know true permitted boundaries.

COMMENT #80: Part II.H.1.b. imposes new detailed requirements for providing cross

sections that depict the surface configuration at "any project area proposing a fill". This requirement seems overly broad as written to apply even to those areas with small amounts of fill where subgrade saturation or slope instability would not be anticipated. AEP requests that DEP provide specific clarification that would result in relief from applying these detailed cross section requirements to small project areas or areas with limited slope.

DEP RESPONSE 80: II.H.1.b. Any project area proposing a fill could endure subgrade saturation and slope stability however this section has been revised to state "Cross sections that accurately depict the surface configuration at any project area proposing a fill with a contributing drainage area of one acre."

COMMENT #81: Part II.H.1.d. Access Roads - 19. AEP's power line projects often involve rebuilding existing lines on existing easements (where landowners have input on access locations) or a requirement to build a line in a certain location based on proximity to generation facilities or customer need. Such linear projects do not typically allow for flexibility to select access road locations such that design details (e.g. pitch grade) imposed by the new permit can consistently be met.

When possible, existing roads are used and these may not meet the new design requirements but are feasible, cost effective options that allow avoidance of new road construction. AEP requests relief from these requirements for access associated with power line projects when the permittee documents in the SWPPP the reason(s) why achieving the access road design details is not feasible.

DEP RESPONSE 81: II.H.1.d. The SWPPP concentrates on providing sediment and erosion control. Access roads are a major source of sediment in the State of West Virginia. Roads can dramatically change the hydrologic conditions of the immediate watershed. Roads that are improperly designed, constructed and stabilized can cause significant erosion and produce vast quantities of sediment.

An existing road requiring widening or grading has the potential cause additional long-term erosion and sediment issues if surface water runoff is not controlled.

If the permittee documents in the SWPPP that achieving the access road design details is not practical based on site specific conditions, then alternative design criteria for access road drainage may be approved by the Director.

COMMENT #82: AEP notes the new requirement that "all unpaved roads on the site shall be graveled or have other durable surface". AEP requests that this language be updated to read "all unpaved roads on the site shall be graveled or have other durable surface unless erosion and sediment is otherwise effectively controlled". AEP's linear power line projects often involve access that is not located on AEP property where AEP does not have full discretion on road surface selection. For example, when access is on land used for agriculture, a landowner may specify that no rock/gravel or soil stabilizing

chemicals be used. AEP reviews such projects on a case-by-case basis to determine some other form of effective erosion and sediment control and requests the flexibility to continue doing so.

DEP RESPONSE 83: The language has been modified to read: "all unpaved roads on the site shall be graveled or have other durable surface unless written request is made by the affected landowner requesting exemption whereby the permittee shall provide enhanced BMPs to effectively control sediment and erosion".

COMMENT #84: Part II.H.1.e.2. - This section requires the type and amount of soil amendments necessary to establish a healthy stand of vegetation.

On projects which require a large amount of material to be brought onto site or excavated from a borrow area, this may not be possible at the time of the application. Soil samples can be collected and analyzed and the proper soil amendments then can be determined. The type and amount of soil amendments would then be documented.

DEP RESPONSE 84: The DEP acknowledges the problem presented by the comment and added this statement to the General Permit:

For projects with unknown sources of potential borrow material or when excavation is necessary before adequate soil amendments may be determined, the Qualified Person shall, as soon as materials are located or excavated, prepare the soil amendment plan. The plan shall become a part of the records retained in accordance with Part II.H.5.

COMMENT #85: The fifth item states "Permanent stabilization within 4 days after construction is complete." The Fact Sheet on page 5 states enhanced BMPs include "Permanent stabilization within 7 days after construction has been completed." The general permit should read "7 days".

DEP RESPONSE 85: The commenter is correct. The fact sheet has a typo and has been changed to 4 days.

COMMENT #86: Part II.H.3.b.3. states "The use of cationic treatment chemicals is prohibited." Cationic treatment chemicals can provide treatment for particles that are hard to settle. AEP has no objection to providing data to show the feed rates will not cause an adverse impact with water quality in the receiving stream.

DEP RESPONSE 86: DEP finds the current language is more protective of water quality. This has been a condition of the General Permit for the last four reissuances.

COMMENT #87: Part III.C.1. (in the third item) states "Submit a modification application in accordance with this permit."

AEP is seeking clarification on when a modification application needs to be submitted. As written, it is unclear if DEP is requiring a modification application for any and all changes. By nature, compliance with the permit requires adjustments of controls when deemed necessary by the Qualified Person performing inspections. The process to make these changes in order to improve controls at the site should not be time consuming or onerous.

AEP suggests clarifying that a modification application is specifically required for significant changes in the plan such as those requiring redesign of a control by an engineer (e.g. change to a sediment basin design) or a substantial increase in planned disturbance area (e.g. increase of over 1/2 acre). Other changes will be noted on the on-site SWPPP drawings. This approach of simply noting minor changes on the SWPPP vs. submitting modifications for any and all changes avoids additional cost to the permittee and administrative burden to both the permittee and the DEP staff.

DEP RESPONSE 87: The permit affords flexibility for modification without making a formal application. Minor adjustments may be noted in the records kept at the site. The Director's field staff may approve modifications, and finally, formal modifications may be done through applications. Specially, moving to an area that drains to a Tier 3 water, extending the grading phase of a Large Construction Project beyond a year, or adding acreage so that the project will disturb 100 or more acres should be formally addressed through a modification to the registration.

COMMENT #88: Part IV.D.2 states "Should the Director not inspect within the time frames established in this section, the Stabilization Certificate may cause the permit coverage to be terminated. Submittal of the certification shall be coordinated with DEP permitting staff"

Clarification of these requirements is needed. AEP requests that clarification be provided that a certification statement submitted with N.O.T. automatically terminates the permit after the time frame detailed in the draft permit.

DEP RESPONSE 88: Termination is a procedure. For clarity, the section was reworded:

The permittee has the option of submitting a certification by a registered professional engineer or professional surveyor that the site meets stabilization requirements. Should the Director not inspect within the time frames established in this section, the Stabilization Certificate shall be accepted in lieu of the final inspection by the Director's staff.

COMMENT #89: Part IV.C.1. states that "From the date stabilization is completed, the permittee has 30 days to ready the site for submittal of N.O.T and by the 30th day must submit the N.O.T"

On some sites this may be unrealistic to achieve due to numerous reasons: weather, soil conditions, contractor issues, etc. The site may be stabilized but not meet the 70 percent of ground coverage requirement. As long as the permittee has kept the controls in place and performing inspections as per the SWPPP, there is no need to have a number of days to submit a N.O.T.

DEP RESPONSE 89: "Final stabilization" means disturbed areas shall be covered by permanent protection. Final stabilization includes pavement, buildings, stable waterways (riprap, concrete, grass or pipe), a healthy, vigorous stand of perennial grass that uniformly covers at least 70 percent of the ground, stable outlet channels with velocity dissipation that directs site runoff to a natural watercourse, and any other approved structure or material.

If the site is not stabilized according these standards, then the N.O.T. should not be submitted.

COMMENT #90: Clarification After the Submittal of N.O.T. - Typically after the N.O.T. is submitted the storm water controls are removed and site inspections are stopped since the site has reached the permanent stabilization requirements as inspected by Qualified Person. The concern is if WVDEP inspector does not feel the site has reached final stabilization as defined in the draft permit. If WVDEP determines the site has not reached final stabilization, the permittee is at risk for Notice of Violation (NOV) since no controls or inspections have been completed. AEP is requesting clarification whether controls can be removed and inspections stopped if the qualified person inspection states the site meets final stabilization.

DEP RESPONSE 91: It is the responsibility of the Permittee to establish that the Qualified Person is capable of determining if disturbed areas have been stabilized by pavement, compacted gravel, permeable pavements/pavers, buildings, waterways (riprap, concrete, grass, or pipe), a healthy, vigorous stand of grass or native vegetation that uniformly covers more than 70 percent of the ground, stable outlet channels with velocity dissipation which directs site runoff to a natural watercourse, and any other approved structure or material.

COMMENT #92: Appendix A - 35. Outlet Markers. AEP objects to outlet outlet markers for any outlets. WVDEP has provided no justification for the time and expense associated with posting and removing outlet markers that are temporary in nature. On transmission projects the discharge may not occur on property owned by the permittee. The requirements of Part II.B requiring the permittee to display a sign for the duration of the project near the entrance of the project or, for linear projects, at a location near the active part of the project that is accessible to the public should be sufficient.

DEP RESPONSE 92: This is a requirement of WV Title 47, Series 11, Section 9

(Special Rules) which states: Outlet markers.

9.1. In accordance with the definitions provided in W. Va. Code '22-11, the following rules are established to identify outlets:

9.2. Each holder of a Water Pollution Control Permit shall post a permanent marker at the establishment under permit in accordance with the following:

9.2.a. A marker shall be posted on the stream bank at each outlet covered by the permit.

9.2.b. The marker shall consist of the name of the establishment to which the permit was issued, the permit number, and the outlet number.

9.2.c. The marker shall be a minimum of two (2) feet by two (2) feet and shall be a minimum of three (3) feet above ground level.

COMMENT #93: Appendix C - 36. AEP requests WVDEP include definitions of permanent stabilization and satisfactory stabilization.

DEP Response 93: Section IV.D.4.: Satisfactory stabilization means ALL disturbed areas shall be covered by some permanent protection. Stabilize includes pavement, compacted gravel, permeable pavements/pavers, buildings, waterways (riprap, concrete, grass, or pipe), a healthy, vigorous stand of grass or native vegetation that uniformly covers more than 70 percent of the ground, stable outlet channels with velocity dissipation which directs site runoff to a natural watercourse, and any other approved structure or material.

COMMENT #94: Section II.B.4. has sign requirements that are unnecessarily cluttered. There is too much information for the passing motorist to comprehend without risking a distracted driving incident. The WVDOH cannot allow a sign of this type to be placed in the viewshed of the traveling public. Inclusion of: <https://apps.dep.wv.gov/WebApp/dep/Search/ePermitting/ePermittingApplicationSeachPage.cfm> on the sign is of no value to the public. Realistically, an individual would most likely google WVDEP stormwater permit. Placing the application date on the sign would serve no real purpose. The general public doesn't care about the application date and the WVDEP Inspector should have that information readily available. A project description would not be useful in searching for the permit information. The WVDOH suggests that the WVDEP use the previous sign requirements which do not appear to present a hazard for the traveling public. For the safety of pedestrian traffic, the bottom of the sign should be at least six feet above the walking surface, pavement, or ground in rural areas and seven feet above the walking surface, pavement, or ground in urban areas.

DEP RESPONSE 94: DEP agrees. The language has been changed to the following:

- ***The applicant's name and emergency telephone number;***
- ***Project Reference ID;***
- ***For info on this stormwater permit*
Call: 800-654-5227 or DEP.Comments@wv.gov.**
- ***Permit Number (See II.B.4.)***

COMMENT #95: Section II.F. seems to limit the acceptable standard procedures to the WVDEP BMP Manual. The WVDOH suggests that the permit include language "or other acceptable manuals or guidance". This would allow the use other manuals including the WVDOH Erosion and Sediment Control Manual, the EPA Construction Stormwater BMPs, the BMP manufacturers' installation directions, etc.

DEP RESPONSE 95: *the BMP Manual's introduction, Chapter 1, on page 1-1, "However, the use of other best management practices manuals may also be acceptable."*

COMMENT #96: Section II.G. could be interpreted as requiring that all erosion and sediment control features throughout the entire project must be installed and inspected which is unnecessary if the project is constructed in phases. The WVDOH suggests that the WVDEP change the language "Construction activities may begin after the Qualified Person inspects and finds that all erosion and sediment controls are installed properly in the areas where earth disturbing activities are planned to commence."

DEP RESPONSE 96: *DEP agrees with this comment and has revised the wording to read: "Construction activities may begin after the Qualified Person inspects and finds that all erosion and sediment controls are installed properly in the areas where earth disturbing activities are planned to commence."*

COMMENT #97: Section II.H.1.a. states "Site maps shall contain a north arrow with sites oriented to the North, with a minimum of five foot contours." This is an unnecessary and inappropriate requirement concerning the orientation of the design plans. The WVDOH suggests the following revision: "Site maps shall contain a north arrow with a minimum of five-foot contours."

DEP RESPONSE 97: *II.H.1.a. This requirement is appropriate and necessary to reduce review time and errors. The original reasoning in allowing different orientation on mapping was to reduce paper use. This requirement will make submittals more efficient now things are digital.*

COMMENT #98: Section II.H.1.a. requires "Drainage patterns during and after construction with the outlet markers depicting the stormwater discharge points;" but requiring the outlet markers be shown on the plans could make the plans too cluttered to see important details. The WVDOH suggests the following revision: "A drainage area map that depicts the drainage patterns during and after construction including stormwater discharge points;"

DEP RESPONSE 98: *Section II.H.1.a: The EPA's 2015 Permit Quality Review (PQR) identified this as a deficiency in the previous permit. Symbols may be used to depict the location for the outlet markers.*

COMMENT #99: Section II.H.1.d.1. attempts to dictate post construction land use which is not within the WVDEP's legal jurisdiction. The WVDOH suggests the elimination of this entire section. Post-construction stabilization is already addressed in the permit and this section is unnecessary.

DEP RESPONSE 99: *DEP is not attempting to dictate design criteria. These requested specifications have been added to improve pollution prevention and control. Alternative design criteria for access road drainage may be approved if warranted by site specific conditions. These minimum standards are directly related to storm water runoff velocity and sediment and erosion control.*

COMMENT #100: It appears that Section II.H.3.a. is guidance as opposed to requirements. The WVDOH believes that it is overly burdensome to require every project to include:

- A report showing the soil mapping units associated with the proposed area and a table with a description of each map unit, acres in the permit area, and percent of permit area;
- Identifying soils and including a soil handling plan;
- A statement whether cement will be mixed onsite or delivered by truck;
- A description of the types of equipment to be used, serviced, repaired, or cleaned onsite;
- A description of the products to be used in construction of buildings and parking lots;
- A statement whether fertilizers, herbicides, and pesticides will be used on the site including a schedule of application; and
- A description of the post-development use of the site.

If the WVDEP views Section II.H.1.d.1. as a requirement then the WVDOH suggests the following revision:

- ~~A report showing the soil mapping units associated with the proposed area and a table with a description of each map unit, acres in the permit area, and percent of permit area;~~
- ~~Identifying soils and including a soil handling plan;~~
- ~~A statement whether cement will be mixed onsite or delivered by truck;~~
- ~~A description of the types of equipment to be used; serviced, repaired, or cleaned onsite;~~
- ~~A description of the products to be used in construction of buildings and parking lots;~~
- ~~A statement whether fertilizers, herbicides, and pesticides will be used on the site including a schedule of application; and~~
- ~~A description of the post-development use of the site.~~

DEP RESPONSE 100: *Showing soil mapping units is valuable in determining slip-prone areas and does not have to be burdensome. A Web Soil Survey from the USDA web site provides this information and is easily obtainable.*

COMMENT #101: The WVDOH disagrees that the Groundwater Protection Plan needs to be a stand-alone document; however, this requirement is relatively easy to address.

DEP RESPONSE 101: DEP acknowledges your comment.

COMMENT #102: The WVDOH appreciates the wisdom the WVDEP uses in Section III.B.2.b and the recognition that inspection frequency should be based on reasonable expectations of potentially pollution producing activities

DEP RESPONSE 102: DEP acknowledges your comment.

COMMENT #103: Section III.B.2.f. should reference Appendix A.6 as opposed to A.7.

DEP RESPONSE 103: DEP agrees with this finding and has made the appropriate change.

COMMENT #104: Section III.C.1. The WVDOH appreciates the WVDEP's recognition that it is not necessary to modify a permit registration unless the additional BMPs replace previously approved BMPs and are substantially different in the method of pollution prevention.

DEP RESPONSE 104: DEP acknowledges your comment.

COMMENT #105: The WVDOH appreciates Section IV.D.2. in view of the fact that the WVDEP Inspectors are extremely busy and do not always have the time or opportunity to perform a final inspection for permit coverage termination.

DEP RESPONSE 105: DEP acknowledges your comment.

COMMENT #106: Appendix C.9. "Detailed Site Plan" is a design plan drawing of sufficient scale to depict proposed construction activity, surface drainage patterns, erosion and sediment control best management practices, limits of disturbance boundary, north arrow with drawing oriented north, and containing surface contours on minimum 5-foot contours. The WVDOH believes this is an unnecessary and in appropriate, and overly burdensome requirement concerning the orientation of the design plans. The WVDOH suggests the following revision: "Detailed Site Plan" is a design plan drawing of sufficient scale to depict proposed construction activity, surface drainage patterns, erosion and sediment control best management practices, limits of disturbance boundary, north arrow with drawing oriented north, and containing surface contours on minimum 5-foot contours.

DEP RESPONSE 106: The DEP believes this requirement is appropriate and necessary to reduce review time and errors. The original reasoning in allowing different orientation on mapping was to reduce paper use. This requirement will make submittals more efficient now that things are digital.

COMMENT #107: DEP Should Clarify Tier 1 and 2 Definitions. Part I.C (p. 1) of the Draft CGP requires “Enhanced BMPs” if a permittee is discharging to “any waters other than Tier 1 or where BMPs are found to be inadequate to protect water quality.” Part II.H.B.3.2 (p. 12) provides specific examples of enhanced BMPs.

WVMWQA questions how the Department has defined Tier 1 and Tier 2; the definition is important because inappropriately categorizing waters as Tier 2 means additional sites will have to implement more expensive Enhanced BMPs.

If DEP chooses to retain the proposed Tier 1 and Tier 2 definitions, despite what appear to be underlying conflicts between the Draft CGP and regulatory text, WVMWQA requests that DEP delete the requirement for Enhanced BMPs if a water is listed as Tier 2 by “default.” It is not appropriate to require a permittee to install or implement more extensive, expensive BMPs if it is not necessary to retain the Tier 2 status.

On a related note, WQMWVA disagrees with the section of the Draft CGP (p. 2) that gives the DEP Director the right to “require Enhanced BMPs for any project.” (p. 2) This allows the Director to unilaterally layer unexpected requirements on a permittee after coverage and creates a notice issue.

DEP RESPONSE 107: DEP rewrote Part I.C., in response to this comment and others that expressed concern over the wording. The section now reads:

Subject to 47 WV C.S.R. 10.3.4.a and 47 C.S.R. 2.4, the discharges covered by this permit are to be of such quality so as not to cause a violation of applicable water quality standards. The permittee must protect the water quality and the existing uses and designations of receiving waters by implementing BMPs. Enhanced BMPs must be used for projects discharging to any waters other than Tier 1 or where standard BMPs are found to be inadequate to protect water quality based on inspections by a Qualified Person, or representatives of the Director of DWWM or the Environmental Protection Agency.

Receiving waters for the exclusive purpose required by the paragraph above and in accordance with 47 C.S.R. 2.4 shall be protected from degradation as explained below:

Tier 1 Protection- Maintains and protects existing uses of a water body and the water quality conditions necessary to support such uses. A waterbody that is listed as impaired on the state’s 303(d) list is considered a Tier 1 water as it pertains to the specific pollutant listed.

Tier 2 Protection- Maintains and protects "high quality" waters - water bodies where the level of water quality exceeds levels necessary to support recreation and wildlife and the propagation and maintenance of fish and other aquatic life. Tier 2 is the default assignment for a waterbody not listed as impaired on the state’s 303(d) list.

Tier 3 Protection- Maintains and protects water quality in outstanding national resource waters.

Protection of Trout Streams - Waters which sustain year-round trout populations. Excluded are those waters which receive annual stockings of trout, but which do not support year-round trout populations. Waters which meet the definition of 47 C.S.R. 2-2.19 (Requirements Governing Water Quality Standards).

Impaired Streams – Sediment-related impaired waters are those that do not meet applicable water quality standards and are listed on the state’s 303(d) list.

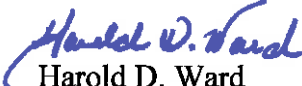
Sediment-Related Pollutant of Concern Total Maximum Daily Loads (TMDL) - A TMDL establishes the maximum amount of a pollutant allowed in a waterbody and serves as the starting point or planning tool for restoring water quality.

DEP reviewed the draft permit and agreed with the comment that clarification is needed for when the Director might require Enhanced BMPs beyond those prescribed by the permit. The wording has been revised to: The Director reserves the right to require Enhanced BMPs for any stormwater discharges associated with land disturbing activities authorized by this permit, upon a finding that water quality impacts have been observed and that standard BMPs cannot adequately protect water quality. However, this finding is not required for discharges already subject to Enhanced BMPs.

This General Permit will be issued on January 10, 2019. Notice is hereby given of your right to appeal the terms and conditions of this General Permit of which you are aggrieved to the Environmental Quality Board by filling 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 permit registration. Thank you for your interest in this application.

The Division of Water and Waste Management Will issue General Permit Number WV00115924 on January 10, 2019.

Sincerely,


Harold D. Ward
Acting Director

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