

STATE OF WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF WATER AND WASTE MANAGEMENT
601 57th STREET SE CHARLESTON, WV 25304-2345

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
WATER POLLUTION CONTROL PERMIT

FACT SHEET, RATIONALE, AND INFORMATION
FOR
NPDES PERMITS FOR STORMWATER DISCHARGES ASSOCIATED WITH
CONSTRUCTION ACTIVITY

This fact sheet explains the Reissuance to the General Permit WV0115924, issued on March 6, 2024.

1. NAME AND ADDRESS OF APPLICANT

Any West Virginia establishment with discharges composed entirely of stormwater associated with construction with land disturbance activity agreeing to be regulated under the terms of this proposed General Permit.

2. GENERAL WV/NPDES PERMIT NO.: WV0115924

3. COUNTY: Any WV County **RECEIVING STREAM:** Any WV stream

4. SIC CODES: Primarily — 1629

5. PUBLIC COMMENT PERIOD: 12/08/2023 – 02/08/2024

6. DESCRIPTION OF APPLICANT'S FACILITY OR ACTIVITY: The main activity is land disturbance with stormwater discharges to surface Waters of the State.

7. **DESCRIPTION OF DISCHARGES:** Earthmoving and grading projects create conditions where accelerated erosion can cause large quantities of soil to be deposited into the streams and rivers of the State. The lack of vegetation, steepening of slopes, increased runoff, decreased infiltration, and other ill effects of construction can cause a 1,000-fold increase in the rate of erosion over pre-existing conditions. The erosion rates on construction sites can run into the hundreds of tons per acre. By volume, sediment is the number one pollutant in the State's waters and degrades more miles of stream than any other pollutant.
8. **COVERAGE UNDER THE GENERAL PERMIT:** The NPDES regulations provide two options for obtaining authorization to stormwater discharge associated with land disturbance activity or permit coverage via General Permit or individual permit.

General NPDES Permits. The vast majority of discharges associated with construction activity are covered under NPDES General Permits for the State of West Virginia. Construction activities are defined as land disturbing operations such as clearing, grubbing, grading, and excavating operations during site development for residential, commercial, or industrial purposes except for operations that result in the disturbance of less than one acre of total land area which are not part of a larger common plan of development or sale. A common plan of development is a contiguous construction project where multiple separate and distinct construction activities may be taking place at different times on different schedules but under one plan, including most subdivisions. General Permits simplify the process for dischargers to obtain authorization to discharge and provide permit requirements for any eligible discharger that files a Minor Construction Activity Application (MCA) to be covered for land disturbance less than 3 acres and submits a Large Construction Activity Application (LCA) for more than 3 acres of land disturbance activity. The General Permit approach will streamline the permitting process and help reduce administrative workload. General Permits, including the fact sheet describing the rationale for permit conditions, are issued by the Permitting Group for the Division of Water and Waste Management (DWWM) after an opportunity for public review and comment on the proposed General Permit.

Typically, to obtain authorization/registration to discharge under a construction General Permit, a discharger (any operators of the construction site; typically, a developer, builder, and/or contractor) submits to the DWWM permitting group via ESS (Electronic Submission System) a

MCA or LCA to be covered under the General Permit. Submission of a MCA or LCA is not a guarantee of permit coverage. The permitting group will review and approve the MCA or LCA and once approved, dischargers will be allowed to start their activity and will be required to comply with all terms and conditions established in the Stormwater Construction General Permit.

After reviewing information regarding permit eligibility contained in the MCA or LCA, the permitting group may notify a construction site operator that it must, instead, apply for an individual permit if the permitting authority determines that the operator does not meet the eligibility conditions for coverage under the General Permit. An example of a situation that might trigger such a determination is when the proposed discharges will not meet applicable water quality standards. In some cases, the permitting authority may allow the operator to proceed with coverage under the General Permit provided additional control measures designed to address the specific issue are implemented.

Individual NPDES Permits. According to 47 CSR 10-13.6.b.2, the Director may require any construction site to apply for an individual permit rather than using the General Permit. Likewise, any discharger may apply to be covered under an individual permit rather than seek coverage under an otherwise applicable General Permit. See 47 CSR 10 -13.6.b.2. Requiring an individual permit.

Unlike a General Permit, an individual permit is intended to be issued to one permittee or a few co- permittees. Individual permits for stormwater discharges from construction sites are rarely used.

9. BACKGROUND:

The 1972 Amendments to the federal Water Pollution Control Act (referred to as the Clean Water Act or CWA), prohibit the discharge of any pollutant to navigable waters from a point source to a water of the United States unless the discharge is authorized by an NPDES permit. Efforts to improve water quality under the NPDES program traditionally and primarily focused on reducing pollutants in discharges of industrial process wastewater and municipal sewage.

However, as pollution control measures were initially developed for these discharges, it became evident that more diffuse sources (occurring over a wide area) of water pollution, such as

agricultural and urban runoff, are also major causes of water quality problems. Some so-called diffuse sources of water pollution, such as agricultural stormwater discharges and irrigation return flows, are statutorily exempted from the NPDES program.

Since the enactment of the 1972 amendments to the CWA, considering the rise of economic activity and population, significant progress in controlling water pollution has been made, particularly concerning industrial process wastewater and municipal sewage.

The "National Water Quality Inventory" 1988 report to Congress provided a general assessment of water quality that concluded pollution from diffuse sources is a serious problem. Runoff from agriculture, urban areas, construction sites, land disposal, and resource extraction is cited by the states as the leading causes of water quality impairment.

The States conducted a more comprehensive study of diffuse pollution sources under the sponsorship of the Association of State and Interstate Water Pollution Control Administrators (ASIWPCA) and the US Environmental Protection Agency (EPA), which indicated that urban runoff is a major cause of beneficial use impairment.

This trend has continued almost unabated. Recent studies (Metropolitan Council of Governments, EPA, states, and others) have shown that urban runoff from all sources severely impacts water quality and limits designated uses of the waters of the United States. Studies by the Watershed Assessment Section of the DEP have determined that sediment is the number one source of water quality impairment in West Virginia. Sediment moderately to heavily impacts approximately 70% of the state's waterways. One of the largest sources of sediment is construction activities.

The Water Quality Act (WQA) of 1987 contained provisions that specifically addressed stormwater discharges. Section (p) was added to the stormwater discharge provision Section 402. Section 402(p)(4)(A) required the EPA to promulgate final regulations governing stormwater permit application requirements for stormwater discharges associated with industrial activity and discharges from large municipal separate stormwater systems. In response to lawsuits filed by the Natural Resource Defense Council (NRDC), the EPA published regulations on November 16, 1990. West Virginia's first construction stormwater General Permit was based on this rule. In early 1992, the EPA published additional information that changed some of the standards, particularly

in relation to construction. The State's previous construction stormwater General Permits closely mirrored the EPA's permit except the federal permits higher minimum disturbance threshold was lowered to three acres.

The NRDC again sued the EPA on several issues, one germane to this permit. NRDC contended, among other items, that the five-acre limit for construction site disturbance was arbitrary and capricious and should be rethought. The court agreed, telling the EPA to come up with a new and lower disturbance threshold. In 1999, the EPA published the Phase II Stormwater Rule in the Federal Register, which, among other things, lowered the disturbance threshold for construction sites that require NPDES permit coverage from five acres to one acre, meeting the intent of the court ruling on NRDC's lawsuit.

In 2009, EPA published a new Construction and Development Effluent Limitations Guidelines rule (C&D rule) (40 CFR Part 450) which established numeric and non-numeric effluent limitations for storm water construction discharges.

In 2019, West Virginia's General Permit WV0115924 was reissued, but was appealed, and the Department developed a Settlement Agreement which was presented to the Environmental Quality Board for issuance as an Order. The Order directed the Department to modify the 2019 permit and place the draft modification in the Public Notice. Many comments were received. The most significant comment came from the EPA in the form of a specific objection, therefore the permit remained in effect.

WVDEP is now preparing to Reissue General Permit WV0115924.

10. GENERAL

The DEP, through its NPDES permitting program, is responsible for ensuring that discharges to surface waters are identified, receive adequate treatment, and are disposed of in accordance with federal and state regulations. Usually this requires an individual permit based on a thorough review of the facility processes and the constituents of its waste stream. The issuance of an individual permit for any facility is a resource intensive and time-consuming process for both the permitting agency and the industry.

DEP records show, on average, approximately 1,200 construction projects each year from 2019 through 2023. Issuing individual permits for such large numbers is not practical, therefore DEP utilizes a general WV/NPDES permit. The DEP assumed primacy for the NPDES Program from the EPA in 1982. Under 47 CSR 10-13.6 of the Legislative Rules, a General Permit can be used to regulate either separate storm sewers or a category of point sources other than separate storm sewers if the sources all:

- a. Involve the same or substantially similar types of operations.
- b. Discharge the same types of waste; Require the same effluent limitations or operating conditions.
- c. Require the same or similar monitoring; and
- d. In the opinion of the Director, are more appropriately controlled under a General Permit than under individual permits.

The General Permit process has proven to be a very efficient mechanism to cover construction-related activities. It is proposed to continue the use of a General Permit for these facilities.

11. COVERAGE UNDER THE GENERAL PERMIT

The General Permit proposes to provide coverage for any discharges composed entirely of stormwater associated with construction activity (as defined under 47 CSR 10-2.8. “Construction Activity” means clearing, grading and excavation that result in, a land disturbance of equal to or greater than one acre in size. Construction activity also includes disturbance of less than one-acre total land area that is part of a large common plan of development or sale if the common plan will ultimately disturb equal to or greater than one acre. Construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility. and agreeing to be regulated under the terms of the General Permit except for:

- A.** Operations that result in the disturbance of less than one acre of total land area, which is not part of a larger common plan of development or sale as described in 47 C.S.R.10-2.8.
- B.** Stormwater discharges associated with land disturbing activities that may reasonably be expected to be causing or contributing to a violation of a water quality standard as determined by the Director.

- C.** Land disturbing activities governed by other NPDES permits issued by the Department of Environmental Protection. This includes Division of Mining and Reclamation permits for coal mining and non-metallic quarries.
- D.** Landfills, except in the preparation of a new landfill, landfill treatment facilities and/or borrow areas.
- E.** Other activities exempt from NPDES permitting requirements as set forth in 40 CFR 122.3(e) and 47 CSR 10-3.2. b.4.
- F.** Land disturbing activities covered under WV General Water Pollution Control Permit No. WV0116815 for Stormwater Associated with Oil and Gas related Constriction Activities as required by the Energy Policy Act of 2005. These activities include but are not limited to construction of drilling sites, waste management pits, and access roads, as well as construction of the transportation and treatment infrastructure such as pipelines, natural gas treatment plants, natural gas pipeline compressor stations, and crude oil pumping stations.

Determination of the disturbed area is made by totaling all disturbed areas directly related to construction of the entire project. Offsite waste (excluding sales of topsoil to individuals) and borrow sites are included in the total disturbance unless borrow sites are commercial quarries and regulated by the Division of Mining and Reclamation.

For subdivisions, the total disturbed area is calculated by adding up all disturbances related to the installation of utilities, construction of sediment control facilities, building of roads and other infrastructure. Phased projects that disturb less than one acre in each phase but will eventually disturb more than one acre with all phases will need to register under this permit.

Construction of single-family residences by the homeowner or homeowner's contractor requiring land disturbances of one to less than three acres in size are provided coverage under the General WV/NPDES Water Pollution Control Permit and now require applications for registration. The NPDES General Permit regulations at 40 CFR 122.28(b)(2) require that a Notice of Intent (NOI) (MCA and LCA) be submitted to obtain coverage under a General Permit for which the discharge is eligible.

The DEP's Best Management Practices Manual contains a generic Storm Water Pollution Plan for single family home construction that may be used as a SWPPP. The plan can be found in Chapter 6 of the manual at the following link:

https://dep.wv.gov/WWE/Programs/stormwater/csw/Pages/ESC_BMP.aspx

12. Previously Approved Projects

Permittees with sites approved, February 9, 2023, thru April 3, 2024 (the effective date of this Reissued General Permit which met the requirements of General WV/NPDES Water Pollution Control Permit WV0115924, effective April 3, 2024, may retain coverage under this Reissued General Permit, effective April 3, 2024, by submitting a certification agreeing to abide by the terms and conditions of this Reissued General Permit. The Certification is available on the WVDEP website.

Certification documents as described in the preceding paragraphs are due no later than July 2, 2024. Permittees with sites that are not stabilized by April 3, 2024, and not eligible for submittal of the Certification described in the preceding paragraphs, must submit a complete application to continue permit on or before July 2, 2024.

Permittees must comply with the Public Notice requirements found in II.A.1.b. of this General Permit and in 47 CSR 10-12.1.

13. Continuation of this General Permit

This section explains the requirements allowing existing facilities to operate under the terms and conditions of this General Permit until a new General Permit is issued or superseded by another permit.

If this General Permit is not reissued or replaced prior to the expiration date, it will be administratively continued in accordance with 47 CSR 10 and remain in force and effect. If you were authorized to discharge under this General Permit prior to the expiration date, any discharges authorized under this permit will automatically remain covered by this General Permit until the

earliest of:

The application for construction activities requiring coverage must be submitted at least 60 days prior to starting the project, except as follows. Projects that discharge to Tier 3 waters, or with 100 or greater acres of disturbance, or with a grading phase lasting one year or longer which will not meet final stabilization, as defined in Appendix C of this General Permit, by the end of the year must be submitted at least 100 days prior to start of construction in order to allow time for the public notice procedure.

- Minor construction projects (one to less than three acres) not discharging to Tier 3 waters must submit the MCA 15 days prior to initiation of construction; or
- Your submittal of notification of termination that the facility has ceased operations; or
- Issuance or denial of an individual permit for the facility's discharge; or
- A formal permit decision by DWWM not to reissue this General Permit, at which time DWWM will identify a reasonable time period for covered dischargers to seek coverage under an alternative General Permit or individual permit. Coverage under this permit will cease at the end of this time period.

14. MONITORING REQUIREMENTS

Monitoring is not required unless requested by the Director. Construction activities are usually of short duration, less than one year, and the pollutant associated with construction is primarily sediment. The measures used to minimize pollution for land disturbing activities are preventative i.e., best management practices (BMPs), and are not subject to effluent limits.

15. WHEN TO APPLY

The application for construction activities requiring coverage must be submitted at least 60 days prior to starting the project, except as follows. Projects that discharge to Tier 3 waters, or with 100 or greater acres of disturbance, or with a grading construction phase greater than one year, must be submitted at least 100 days prior to start of construction in order to allow for time for the public notice procedure.

Minor construction projects (one to less than three acres) not discharging to Tier 3 waters must submit the MCA 15 days prior to initiation of construction. Minor construction projects discharging to Tier 3 waters must submit to the MCA and SWPPP at least 60 days prior to start of construction.

A project that disturbs one to less than three acres but will have construction activities greater than one year must file a Site Registration Application Form and be public noticed.

The General Permit also provides for earth-disturbances that occur in response to a public emergency (e.g., a natural disaster, widespread disruption in essential public services). If earth-disturbances require immediate authorization to avoid imminent endangerment to human health or the environment, or to reestablish essential public services, permit coverage for discharges associated with such earth-disturbances are authorized on the condition that a complete and accurate MCA or LCA is submitted within 30 calendar days after commencing earth-disturbing activities.

The applicant must provide documentation in their SWPPP to substantiate the occurrence of the public emergency. DEP recognizes that obtaining General Permit coverage following the normal procedures is not feasible in situations requiring emergency-related construction. By providing the operators of these projects with the ability to immediately begin work, and to postpone the applications, DEP intends that these projects may proceed without delay. Once the initial 30 calendar days have expired, however, it is the requirement of this permit that applications be submitted for permit coverage.

16. ANTIDegradation STATEMENT

The permit calls for enhanced BMPs for discharges subject to sediment related TMDL and discharges to sensitive waters.

17. SUMMARY OF SIGNIFICANT CHANGES TO THE PERMIT

There are no significant changes from the 2019 permit proposed in the draft 2024 Reissuance Permit for WV/NPDES WV0115954.

Public Notice

The State of West Virginia, Department of Environmental Protection, Division of Water and Waste Management, has made a tentative decision for a State NPDES Permit as listed on this Fact Sheet. To provide public participation on the proposed issuance of the required permit, the following information is being supplied in accordance with Title 47, Series 10, Section 11.3.e.2 and 3 of the West Virginia Legislative Rules.

Any interested persons may submit written comments on the Draft Permit and may request a public hearing by addressing such to the Director of the DWWM within 30 days of the date of the public notice. Comments will be accepted until January 29, 2024. They should be addressed to:

Director, Division of Water and Waste Management
Department of Environmental Protection
601 57th Street, SE
Charleston, WV 25304
Attention: Sharon Mullins
Phone: (304) 926-0499 Extension 43808
[E-mail: sharon.a.mullins@wv.gov](mailto:sharon.a.mullins@wv.gov)

All comments received within this period will be considered prior to acting on the Draft General Permit. Correspondence should include the name, address and telephone number of the writer and a concise statement of the nature of the issues being raised.

All applicable information concerning any permit application and the tentative decisions is on file and may be inspected, by appointment, or copies obtained, at a nominal cost, at the offices of the Division of Water and Waste Management, 601 57th Street, SE, Charleston, West Virginia 25304, Monday through Friday (except State holidays) between 8:00 a.m. to 4:00 p.m.

Requests for additional information should be directed to Sharon Mullins at (304) 926-0499, Extension 43808.