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**Responsiveness Summary
General Water Pollution Control Permit WV0116815
For Stormwater Discharges Associated With
Oil and Gas Related Construction Activities**

The West Virginia Department of Environmental Protection's (WVDEP) Division of Water and Waste Management (DWWM) would like to take this opportunity to thank those individuals who submitted written comments on the General West Virginia Permit for Stormwater Associated with Oil and Gas Related Construction Activities Permit No. WV0116815.

DWWM published a Class II legal advertisement in 25 state newspapers announcing DWWM's desire to issue the general permit for stormwater associated with oil and gas construction activities. The public notice announced a 30 day comment period and public hearing date for the draft general permit.

One public hearing was held during the public notice period. The public hearing was held at the WVDEP's Charleston headquarters on April 9, 2012.

This responsiveness summary highlights the issues and concerns that were identified during the public hearing and in the written comments received during the comment period. In many cases multiple comments were provided on specific sections or issues, and both the comments and responses have been summarized to the extent possible.

Comments will appear first, with the WVDEP's response following in bold type. Comments reference the draft general permit unless otherwise noted.

1. The exemption for activities regulated by OOG is an overly broad exemption. All construction activities by the oil and gas industry should be covered by the general permit. Operators and their employees cannot be expected to perform satisfactorily where there are two divergent sets of standards. If OOG permitted activities are not covered, the Division of Water and the OOG need to coordinate their efforts so that all oil and gas construction activities are held to the same standards.

DWWM believes this exemption is appropriate. The WVDEP's Office of Oil and Gas (OOG) has a permitting and certification program in place for the activities not covered under this General Permit. DWWM and OOG are working together on this General Permit.

2. It is good that the permit explicitly states that discharges shall not cause or contribute to violations of water quality standards. However, in comparing the proposed permit with against two other similar, existing general permits from DEP, we note that the following language was left out: *"Discharges that are not in compliance with these standards are not authorized."* This seems to be an important omission. Why was this language omitted from the oil and gas permit?

The Agency concurs with your comment, the language was not omitted intentionally and will be included.

3. Section D – Operation and Maintenance
The terms used in section D.1. need to be clarified. The use of words such as "treatment" or "treatment facility" is potentially misleading.

For the purpose of this section, "treatment" and "treatment facilities" mean the best management practices approved in the stormwater pollution prevention plan. DWWM would like to use the same language found in the WV/NPDES Permit for Stormwater Associated with Construction Activities.

4. Section E – Monitoring and Reporting
In the definition of "best management practices", the use of the term "plant" is not appropriate when describing oil and gas construction activities, which can range from roads and pipelines to compressor and transmission stations.

DWWM believes the word "plant" in this definition could mean compressor stations, transmission stations, etc.

5. The definition of "establishment" should be more industry specific. In addition, the definition includes "wells" which are exempt from the proposed permit.

The Agency concurs with your comment, however, the permit derived the definition of establishment from 47CSR58 2.7 "Industrial Establishment". The purpose of including this definition is to incorporate the requirements of the Groundwater Protection Rule, particularly the requirement for a Groundwater Protection Plan, for these activities.

6. G.4. – The Stormwater Pollution Prevention Plans (SWPP) and Groundwater Protection Plans (GWP) required by this section are the heart of the permit. These plans are critical to the successful control of stormwater pollution and protection of groundwater. Generally, these requirements are the same as for other construction sites, which is good.

However, the following language, which appears in other similar permits, has been omitted from the oil and gas permit: *"For each discharge design point, the pre-construction peak discharge from a one year, 24-hour storm in cubic feet per second and the post-development peak discharge*

from a one year, 24-hour storm in cubic feet per second shall be calculated. The design procedures shall follow professionally accepted engineering and hydrologic methodologies.”

The requirement noted above is not needed for liner pipeline activities or activities that will have little impervious areas after construction.

7. Likewise, this statement – *“These structures shall also have a certified as-built drawing submitted with the Notice of Termination at the completion of the project,”* – referring to permanent stormwater management structures has also been left out.

DWWM made an error by not removing this language from the WV/NPDES Permit for Stormwater Associated with Construction Activities. However, the language was removed from Section G.4.e.2.B. Stormwater Management Plan but missed in the Notice of Termination section. DWWM will make sure it is removed in the next draft of the WV/NPDES Permit for Stormwater Associated with Construction Activities. The state of West Virginia does not have post construction stormwater management regulations at this time. Therefore, there is no need for as built drawings to be submitted to DWWM. If post construction structures are required by local ordinances then the permittee would have to comply with the requirements of the local ordinance.

8. Sample SWPPs and GPPs would help improve industry performance in these areas.

DWMM will consider this request.

G.5. – This section on Discharges to Waters with Approved TMDLs is significantly condensed and appears to be missing some important language that is found in the construction stormwater permit. For example, the paragraph regarding discharges to 303(d)-listed (impaired) waters, has been completely omitted. However, the Division uses and cites the existence the 303(d) list in its rationale for requiring additional BMPs or monitoring activities.

DWWM believes that by requiring permit coverage under this permit for activities that are exempt from NPDES permitting and including the requirements noted in this section DWWM meets the intent of TMDL implementation.

9. The following paragraph from the construction stormwater permit is completely omitted from the oil and gas permit: *“G.6. Endangered and Threatened Species
If a site discharges to a stream where a federally endangered or threatened species or its habitats are present, the applicant shall contact the U.S. Fish and Wildlife Service to insure that requirements of the Federal Endangered Species Act are met.”*

While the oil and gas industry is exempt from the Clean Water Act and number of other major environmental statutes, it is not exempt from the Endangered Species Act and we do not understand the reason for this omission.

This condition is in the WV/NPDES Permit for Stormwater Associated with Construction Activities because the US Environmental Protection Agency required it to be in that permit. Since this is a State Permit and not a NPDES permit there is no requirement for its inclusion. DWMM cannot enforce the Federal Endangered Species Act and this condition is more informational than enforceable by DWWM.

10. “25-year, 24-hour precipitation” (or “storm” as it appears in the Division’s BMPs) events are widely beyond the requirements of the Office of Oil and Gas’ Manual.

Activities that are covered under this General Permit must use the design standards of this General Permit and DWWM's BMP Manual or a similar BMP Manual. The "25-year, 24 hour storm event" criteria applies to sediment basin emergency spillway design.

11. The Division needs to create a hierarchy of effective controls for terrains/soils of the state. Industry seemly (at least in our area) is only aware of how to inappropriately install straw bales (disallowed under this permit but favored by the OOG Manual) and silt fence.

DWWM believes that this will be accomplished by the requirements and design standards set forth in the General Permit and our BMP Manual.

12. The Groundwater Pollution Prevention plan needs to be specially constructed for industry specific possible pollutant.

The Generic Groundwater Protection Plan already developed for construction activities covers the majority of possible pollutant from this activity. However it is the responsibility of the applicant to meet the requirements outlined in 47CSR58 Groundwater Protection Rule in regards to the content of the Groundwater Protection Plan, chemical storage and secondary containment.

13. G.4.e.1.E. Gravel should also be used on roads above 15% grade.

This concern will be left to the best professional judgment of the permit reviewer during the review of the Stormwater Pollution Prevention Plan. In relation to sediment and erosion control it is more important to have correctly spaced water bars, culverts on the roads and stabilized side ditches.

14. G.4.e.2.A.i. Industry is used to seeding with no after maintenance when its activities are completed at a site. This can be more than a year after construction began. We have well sites in our area which are still almost bare of vegetation 6 years after "reclamation" was completed. Mulching immediately after construction activity should be required with temporary seeding, when possible. Permanent seeding should eventually follow with maintenance.

DWWM believes this section already addresses these concerns for activities that will be permitted under this General Permit.

15. On site there should be a notebook having specific SWPP and GPP requirements for the permitted activity. In, addition, there needs to be individual sheets detailing construction and maintenance of each erosion and sediment control. The RAPPS guidance is good for this. Both operators and construction crew members need to be aware of this requirement.

DWWM believes these concerns are already addressed throughout the draft General Permit. Please see Sections G.4., G.4.a., G.4.d.1.A., G.4.e.2., G.4.e.2.A.ii., G.4.e.2.C.iii., G.4.e.2.C.iv., G.4.e.2.C.v. and G.4.e.2.D. The draft General Permit states that the Stormwater Pollution Prevention Plan must be developed in accordance with good engineering practices. If an applicant wishes to use RAPPS it would be evaluated during the Stormwater Pollution Prevention Plan review by DWWM staff and a determination made in regards to meeting the requirements of the General Permit and designs standards on the BMP Manual.

16. It would be helpful to clarify which activities are regulated under this permit and which are regulated by the Office of Oil and Gas under the drilling permit.

The intent of this draft General Permit is to regulate all oil and gas construction activities not permitted by OOG under a well works permit or an impoundment certification.

17. Sections G.4.b.2 and G.4.b.3 describe special cases related to discharges to Tier 3 waters, small or large disturbed areas, and short or long grading phases. These sections are extremely confusing and we suggest that DEP reword them, and consider even creating a table that clarifies these requirements.

DWWM will develop a chart and attach it with the instruction for the applications that will be developed for this General Permit.

18. There is nothing in the draft permit to encourage a permittee to comply with the Noxious Weeds Law of West Virginia.

DWWM will provide a statement about this law and the contact information for the Department of Agriculture with the instructions for the applications that will be developed for this General Permit.

19. There is nothing to encourage the use of native plants.

DWWM will add a comment to the fact sheet that native plants should be considered when permanent seeding is done.

20. Page 15, G.4.e.1.D. indicates requirements of mapping. Do property boundaries and easements really need to be included for stormwater permitting?

Yes. It is important to have this information to determine the entire scope of a project and to determine the correct BMP due to these locations and possible limitations.

21. Page 16, G.4.e.1.E mentions "haul roads". For clarification, a definition needs to be provided for a haul road.

A haul road is any temporary road used during construction and will be removed or vegetated when construction is complete.

22. Page 17, G.4.e.2.A.ii. a & b contain requirements for sediment traps and basins. For clarity, should linear projects be listed as an exclusion from this requirement?

Linear projects routinely have lay down areas and new access road that are part of the submitted application and these areas may require sediment traps and sediment basins. Also there may be instances where sediment traps or sediment basin may be required near stream crossing to satisfy Antidegradation or TMDL requirements.

23. What will determine a pre-existing construction site? Can an active construction site be identified as one with the equipment already mobilized on site?

The draft General Permit states, "Sites under active construction prior to the effective date of this General Permit are not required to apply for coverage." However, any new disturbance of one acre or more is required to obtain coverage under this permit. The draft General Permit defines construction as land disturbance operations such as grubbing, grading, filling, and excavating during site development for residential, commercial or industrial purposes. This includes, but is not limited to, access roads, borrow and spoil areas and equipment lay down or staging areas.

24. PA oil and gas regulation have requirements for permit coverage for 5 acres and above. Will WV consider revising its stormwater permit coverage requirements to project with disturbances of 5 acres and above?

DWWM's draft General Permit is consistent with the WV/NPDES Permit for Stormwater Associated with Construction Activities and will remain at 1 acre or above.

25. Will e-filing be mandatory?

Yes, applications will need to be submitted through e-permitting.

26. All e-filings require the permittee to print out the signature page, sign, and mail in. Can the signature be simplified to speed up the submittal process of the permit applications? This may not be in the draft permit, but the timing of submittal, review, and approval can be made simpler. A permit submission is not considered complete until the application, a hand signature, and fee are received by WVDEP.

DWWM is working on this matter. As of right now e-filing requires applicants to print out the signature page, sign it and send it to DWWM. As required by Statute and regulation the application is deemed incomplete until the signature page is received by DWWM.

27. For simplicity of accepting permit applications and modifications, the current fee payment process slows down progress. Can online payments by credit card be accepted?

This may not be in the draft permit, but the timing of submittal, review, and approval can be made simpler. Again, a permit submission is not considered complete until the application, a hand signature, and fee are received by WVDEP.

A credit card payment can be made for application and modification fees by calling 304-926-0499, Ext. 4888.

28. When a project/permit is approved, a letter is sent out by e-mail. The 100% approval can be seen on the e-filing site. Instead of waiting on the letter, can construction proceed when the approval appears on the web site?

No, the email must be sent before construction activities can start.

29. The Draft Fact Sheet-Page 1, item 1 states: Construction activities are defined as land disturbing operations such as 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. The highlighted section should be changed, as this permit is for oil and gas operations only. A suggestion for the replacement language could read: "oil and gas field activity or operation".

DWWM believes that the definition for construction should stay broad to encompass all activities that may be required to obtain permit coverage under this General permit.

30. It is unclear what types of activities the DEP intends to regulate under this permit, and which activities it will continue to regulate by the "erosion and sediment control plan" that must accompany a well work permit issued by OOG. CONSOL has interpreted from the Natural Gas Horizontal Well Control Act and Fact Sheet (section 8) that roads and pipelines are to be regulated under this permit, while construction of well pads and pits/impoundments will be overseen by the OOG "erosion and sediment control plan". It appears as though this proposed

general permit for construction activities is suited for construction of large centralized sites, not for linear projects like roads and pipelines. CONSOL; believes that established approach of utilizing standard BMPs outlined in erosion and sediment control plans are effective and appropriate for all types of construction activities with development of natural gas and oil sites.

As prescribed on the cover page of the General permit “This is to certify that any discharge of stormwater runoff from oil and gas field activities or operations associated with exploration, production, processing or treatment operations or transmission facilities, disturbing one acre or greater of land area are agreeing to be regulated under the terms of this general permit, except for;

- 1. 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.**
- 2. 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.**
- 3. Activities regulated under the Department of Environmental Protection Office of Oil and Gas.**
- 4. Activities covered under the WV NPDES Stormwater Construction General Permit.”**

Please see item no. 3 above, it is clearly states activities covered under Oil and Gas are not required to have coverage under this General Permit. This permit addresses erosion and sediment control on activities that have never had such controls in place by OOG. The terms and conditions of the permit has been demonstrated to be very "applicable" to linear projects as already demonstrated by parallel permits issued to pipeline and road construction under WV/NPDES Permit for Stormwater Associated with Construction Activities.

31. CONSOL believes that requirements of the OOG “erosion and sediment control guidance” be incorporated into the requirements of this permit to ensure consistent enforcement among Department offices.

DWWM feels that the terms and conditions in the General Permit are the most appropriate for the construction activities covered under this General Permit.

32. The permit has different requirements depending on the acreage disturbed. For example, this permit does not apply for areas whose disturbance is less than one acre (if they are not part of a larger common plan of development). CONSOL suggests that this needs to be increased to apply to areas which has disturbances greater than five acres (and excludes roads and pipelines for determination of acreage).

Please see response to comment number 24.

33. CONSOL interprets that this permit is only required for stormwater controls with a direct discharge to waters of the State (through qualifying point sources, outlets or disposal systems) and does not include non-point source outlet or percolation into the ground. Furthermore CONSOL interprets that outlet markers are only required for qualifying point source outlet.

This General Permit is for discharge of stormwater runoff from oil and gas field activities or operations associated with exploration, production, processing or treatment operations

or transmission facilities, disturbing one acre or greater of land area and is designed to protect waters of the State which include both groundwater and surfacewater. DWWM believes the requirements outlined in Title 47, Series 11, Section 9 (Special Rules) adequately address this comment in regards to outlet markers.

34. This proposed general permit “proposes sites currently under construction prior to the effective date of this general permit are not required to apply for coverage, however new disturbances is.” Based on prior WVDEP regulatory changes, any project close to construction (having permits cleared from OLS, ACOE, SHPO and E&S implementation) would suddenly be delayed in order to submit and receives approval on this new stormwater permit. Depending on DEP’s transition period, this could have a significant effect on Marcellus operations. Consol suggests that a more flexible transition period be considered by the department for sites that have already received multiple approvals under the current regulatory and permitting structure be allowed to begin construction without a stormwater permit. CONSOL believes that a timeline for implementation should fall back to permitting status and not construction for planned construction.

Because there is no state permit for stormwater discharges associated with these activities, DWWM must use construction status. DWWM believes that allowing the activity already under construction to proceed while the areas not actively under construction are submitted for permit coverage is a flexible transition.

35. Consol believes that transferability needs to be more conducive to industry. CONSOL suggests that a minor modification transfer approval (or file amendment) should be acceptable for a stormwater permit transfer. Provision during minor modification revision review can be implemented to guard against transfer to an Operator with questionable compliance history. New permits and new reviews as it currently stated would be time consuming and have little values to industry or DEP.

DWWM transfers the majority of permits without even a modification being submitted. The form located at the following link is the notification that is noted in this condition.
<http://www.dep.wv.gov/WWE/PROGRAMS/STORMWATER/CSW/Pages/cswdocs.aspx>
If the scope of the project changes significantly from the previous owner to the new owner then a modification or a new permit may be required.

36. CONSOL believes that a Groundwater Protection Plan is not required in conjunction with the requirements of the SWPPP.

Stormwater discharges associated with construction activities are industrial activities and as such must comply with 47CSR58. The Groundwater Protection Plan can be incorporated into the Stormwater Pollution Prevention Plan or be a standalone document.

37. CONSOL strongly objects to the time it takes to obtain coverage under the general permit. These time periods are excessive and are not required by statutes or rule for this non-NPDES permit. This goes against the purpose of a general permit, which allows for construction according to pre-determined rules and construction standards. CONSOL supports the suggestion of WVONGA for implementation of a Notice of Intent.

DWWM believes the review time frames proposed in the draft General Permit are adequate for the permit reviewer. These timelines are the same as WV/NPDES Permit for Stormwater Associated with Construction Activities and oil and gas companies that are currently applying for that General Permit have had no problem meeting these time periods.

38. G-4e 2B-“Since development site conditions vary widely, plan preparers will have significant latitude in designing practices to comply with provision of the permit”. This may be a positive condition, but DEP reviewers receiving inconsistent standards and documents will inevitably lead to longer reviews and multiple revisions. Are reviewers focusing on minimum requirements and administrative completeness? If not, CONSOL suggests that general standards be defined.

This condition is in regards to the stormwater management plan and DWWM believes that a full reading of the section adequately addresses this comment.

39. G-4E-2C IV- Employee training. I assume this is in reference to DEP providing training to permit applicants.

No, this requirement is in reference to training provided by the permittee or the contractor to workers on the job site.

40. G-5J- “Permit coverage for construction activities by this permit expires upon satisfactory stabilization of the site...” CONSOL interprets this to mean the permit is perpetual until the site is stabilized. Pipeline projects will be clearer since they go back to original contours immediately after installation, but long term well sites and compressor site may not go back to original contours for 50+ plus years. CONSOL suggests that further clarification is needed to understand the requirements of expiration of the permit in order to accurately forecast/budget annual fees associated with these permits.

Well sites are not covered under this draft General Permit. The definition of stabilized is well defined in this section and there is no reference to original contours in the definition.

41. The draft mentions permit forms but offers not detail. As we saw with the last WVDEP regulatory change, the adopted regulations and form followed several months later. It is extremely hard to meet the regulatory requirements without a mechanism for submission, review and approval. These forms need to be ready immediately after (or preferably before) the permit is adopted.

The permit application forms will be ready for use before the effective date of the General Permit.

42. Condition D.4 of the draft permit governing “Upsets” should be modified to include as excusable upsets those which are the result of unusually heavy rainfall or the result of damage to BMP structures such as silt fence or water bars that are caused by trespassers.

DWWM believes the definition of Upset as written in the draft General Permit adequately addresses this comment. Upset means an exceptional incident in which there is unintentional and temporary noncompliance with the terms and conditions of the permit and the Stormwater Pollution Prevention Plan because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

43. Condition D.5. of the draft permit requires DEP approval for disposal of “Removed Substances” which are defined to include “any solids, sludge, filter backwash or other pollutants (removed in the course of treatment or the control of wastewater) and which are intended for disposal within the State...” This is a condition that may be appropriate for some industrial establishments, where wastewater treatment solids and filter solids could contain a high concentration of toxic pollutants, but it is inappropriate with regard to this permit. The only removed substance likely to be encountered by holders of this permit is sediment that is cleaned out of a trap or water bar.

Such sediment can be safely side cast onto the ground in a place where it will not run-off into a stream. This condition should be removed from the permit.

This condition starts off with “Where removed substances are not otherwise covered by the terms and conditions of this permit or other existing permits by the Director...” This draft General Permit addresses sediment as a removed substance and provides conditions on how to properly dispose of the sediment removed from best management practices and as such no further approval is necessary. As the commenter stated it is likely that the only removed substance will be sediment but since there is a possibility that other substances may have to be removed at a particular project. DWWM has decided to keep this section as written in the draft General Permit.

44. Condition G.4.e.2.D. of the draft permit requires that the site be inspected at a minimum of once every seven calendar days and within 24 hours after any storm event in excess of 0.5 inches of rain per 24 hour time period. Antero believes that the frequency of such inspections is excessive, provides little benefit to the environment, and is a substantial cost to the permittee. Consistent with similar permit requirements in other oil and gas producing states such as Colorado and Pennsylvania, Antero would suggest that twice per month inspections is more consistent with other state programs and is protective of the environment. With regards to inspections following storm events, given weather within the state and the frequency of 0.5 inch storm events in the state, Antero believes the current inspection program is excessive, particularly given the current requirements for weekly inspections. Further, given the rural nature of these sites and a lack of local weather measuring stations in some instances, it is unclear what tool would be used in some instances to ascertain whether a rain event has triggered an inspection requirement.

Based upon past experience DWWM believes this requirement is adequate. Proper inspections of the installed BMPs are very important and have tremendous benefit to the environment especially during periods of continuous storm events. Sediment captured during an event may not cause a failure of the BMP but if the BMP is not inspected after that rain event the next rain event could cause the BMP to fail. Failure to inspect the BMP again immediately means sediment laden water could be allowed to discharge for seven days or in the case of the suggestion provided by the commenter weeks could go by. Inexpensive rain gauges can be bought from hardware store, farm store, department stores, etc. and installed at the project site.

45. Condition G.4.e.2.C.ii of the draft permit states that “provision must be made to control fugitive dust.” The reason for this requirement is unclear. If it is a violation of the air pollution control requirements that should be dealt with by the Office of Air Quality. Fugitive dust controls do not belong in a stormwater permit.

DWWM believes by controlling fugitive dust especially on haul roads has a positive effect on best management practices. The very fine soil particles that develop on a construction site erode quickly during a rain event and often times overwhelm a best management practice and these fine particles act like clay soils and do not settle out in sediment traps or basins. By wetting the haul road the fine particles do not erode as quickly and do not reach the sediment trap or sediment basin in such a fine size and settle more quickly.

46. Antero urges the DEP to reconsider the requirement for a notification period of up to 90 days for those who qualify for the stormwater permit. This is an unnecessarily long period to qualify for what will be very similar types of construction work that should be relatively simple to review.

The 90 day prior to construction requirement includes the 45 day review period, the 30 day public notice requirement and 15 days to respond to comments and make a permitting

decision. The time period could be less depending on the amount of comments received and the initial review phase.

47. In, light of the recent past suggestion by the agency that oil and gas facilities typically exempt from NPDES program may wish to voluntarily submit to a construction activities permit, it seems that the language in the Fact Sheet and the opening paragraph of the draft permit refers to “agreeing” to be regulated is easily misinterpreted as a voluntary permit. There should be a clarifying statement that this permit is required prior to engaging in construction activities by oil and gas operations. The last sentence on Page 3 of the Fact Sheet states “... any new land disturbance of one acre or more is required to obtain coverage under this permit.” This sentence may be better understood if offered earlier in the permit and the Fact Sheet.

This language is consistent with other General Permits. “Agreeing” to be regulated means in lieu of an individual permit being required for the project.

48. General reference to the WV Water Pollution Control Act does not provide clarity as to the enabling language upon which the agency is relying. In order to provide clear legal justification at the forefront of this new state authorized permit, it would be advisable for the agency to specify the section(s) upon which it relies. To stand silent on the issue only encourages challenge and misunderstanding the agency’s authorities.

West Virginia Code § 22-6-7, which is incorporated into the Horizontal Well Act by W. Va. Code § 22-6A-5(a)(4), gives the Secretary of the Department of Environmental Protection the authority to issue water pollution control permits, including general construction stormwater permits. This is in addition to the authority the Secretary also has pursuant to W. Va. Code § 22-11-8 to issue a permit for direct or indirect discharges into the Water of the State.

49. The permit provides it is applicable to “oil and gas activities or operation associated with the exploration, production, processing or treatment operation transmission facilities.” It is suggested that the language be slightly modified to refer to “construction activities of oil and gas field activities or operations...”

DWWM agrees to make the suggested change as noted above.

50. The permit provides that “discharges from sites covered under the General Permit shall not cause or contribute to a violation of 47 CSR 2 (Requirements Governing Water Quality Standards and 46 CSR 12, (Requirements Governing Groundwater Standards) of the West Virginia Legislative Rules pursuant to Chapter 22, Article 11 and Article 12. It is recommended that the permit specify that compliance with the permit and SWPPP shall constitute compliance with the WV Water Pollution Control Act.

The permit allows discharges of stormwater runoff from oil and gas field activities or operations associated with exploration, production, processing or treatment operations or transmission facilities. This permit does not require any facility to meet or comply with any numeric effluent discharge limitation. In lieu of numeric effluent discharge limitation the General Permit requires the facility to implement their storm water pollution prevention plan (SWPPP) and best management practice (BMP) to minimize stormwater discharge impact on the receiving stream. The only way to ensure the approved SWPPP and BMP are effectively installed and implemented is by requiring the existing water quality is maintain. Therefore, the condition in the permit “discharges from sites covered under the General Permit shall not cause or contribute to a violation of 47 CSR 2 (Requirements Governing Water Quality Standards and 46 CSR 12, (Requirements Governing Groundwater

Standards) of the West Virginia Legislative Rules pursuant to Chapter 22, Article 11 and Article 12” is appropriate.

51. The Schedule of Compliance references the permit conditions and the approved Stormwater Pollution Prevention Plan. Where in this statement does the Groundwater Protection Plan have a role? The groundwater statute has a very specific application and it is not apparent that this permit appropriately reaches the WV Groundwater Protection Act.

The Groundwater Protection Plan has been added to this sentence. Stormwater discharges associated with construction activities are industrial activities and as such must comply with 47CSR58. The Groundwater Protection Plan can be incorporated into the Stormwater Pollution Prevention Plan or be a standalone document.

52. Subparagraph C.10.a needs modified to be more reflective of the statutory provision of W.Va. Code 22-11-4(e) in which it states that, “The director has the authority to enter at all reasonable times...” Therefore, Subparagraph C.10 a. should be revised to read, “To enter the permittee’s premises at all reasonable times in which an effluent source or activity is located...”

DWWM concurs with your request and the change will be made.

53. Subparagraph G.4.b includes the statement “Prospective permittees should submit applications for review prior to accepting construction bids on the project.” This prohibition presumes that accepting a construction bid by definition involves a financial expectation that the permit will be issued. It is suggested that this language be modified to read, “A pending application shall not be presumed by any party as being sufficient indicia to rely upon its content or anticipate approval by the agency.”

The reason for the suggestion is that it may be necessary to make changes to the application during the review process which may create an issue between the permittee and the chosen contractor. To avoid this situation it is DWWM’s recommendation to get prior approval for the application before accepting bids on the project.

54. Subsection G.4.b.5 should be modified by adding to the final sentence to expand the options for display of a sign as follows: “If it is not feasible to display a sign at or near the project, the registrant, with prior approval from the DWWM, may post a notice containing the foregoing information at a local public building, including, but not limited to, a town hall or public library or as otherwise approved by the DWWM if a local building is not available.”

DWWM believes that the language as written is adequate to address posting of the sign and that the intent is that the sign be at the project location or at a public building.

55. Subparagraph G.4.c should be revised in the first paragraph to clarify the second sentence to read, “Should condition ~~warrant~~ occur that have the reasonable potential to adversely impact the surface waters of the State, or the Director’s representative, may request changes to the SWPPP during a field inspection.”

DWWM believes the appropriate term is warrant and has chosen not to make the suggested change.

56. Subparagraph G.4.e.1.B. through D. These subparagraphs need revised to correctly number them.

DWWM concurs with the comment and changes have been made accordingly.

57. Subparagraph G.4.e.1.B. This subparagraph should be revised by adding the following punctuation to clarify that only estimates are required of the following enumerated items. "Estimates of the following: 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." Such estimates should only be required for those operations that will not be returning to the original grade as noted in other industry comments.

DWWM concurs with the comment and changes have been made accordingly.

58. Section G.4.e.1.E. This first paragraph should be modified to add the following: "Each site shall have stone or other solid surface other than packed dirt access entrance and exit drives and parking areas to reduce the tracing (tracking) of sediment onto public or private roads."

DWWM will clarify in the fact sheet.

59. Section G.4.e.2.A.i. The first paragraph should be revised to provide clarification and acknowledgment that many variables impact vegetative practices. It is proposed that the language read: "A suggested record of the dates, times or conditions when major grading activities will occur, and when construction activities may temporarily or permanently cease on a portion of the site, and when and under what conditions stabilization measures will be initiated shall be included in the plan."

DWWM believes the paragraph as written in the draft General Permit is appropriate. The paragraph has been in the WV/NPDES Permit for Stormwater Associated with Construction Activities for some time with hundreds of projects providing the requested information.

60. Subparagraph G.4.e.2.A.i.a. This sentence should be broadened to remove the specific reference to snow and rather refer to "natural causes." "Where the initiation of stabilization measures by the seventh day after construction activity temporarily or permanently ceases is preclude by natural causes ~~snow cover~~ stabilization measures shall be initiated as soon as conditions allow."

DWWM agrees to make the suggested change to the draft General Permit.

61. Subparagraph G.4.3.2.A.ii.h. This sentence should be rewritten as follows: "All trapped sediments will be disposed on an upland area ~~where there is no chance of entering nearby stream~~ and managed to protect against unauthorized water quality impacts.

DWWM has chosen not to make the suggested change and to leave the statement as written in the draft General Permit.

62. Subparagraph G.4.e.2.B. This section should be revised to modify the last sentence of the second paragraph to read: "Compliance with this general permit does not assure compliance with local regulations, or ordinances, to the extent that they are not preempted by State or Federal law."

DWWM has chosen not to make the suggested change and to leave the statement as written in the draft General Permit.

63. Subparagraph G.4.f. This section provides that an owner or operator make plans available to members of the public. The language could be subject to abuse by the public with onerous requests for multiple copies. As such, we propose that the language be revised and provide that such plans shall be made available to the public for review upon request. "The owner or operators of a project with stormwater discharges covered by this permit shall make plans available for review to members of the public upon request."

DWWM believes that the suggested change is the intent of the original sentence and agrees to make the suggested change for clarity.

64. Subparagraph H should be modified to make it clear that “If there is evidence indicating reasonable potential or realized impacts...” “Reasonable potential” is a term well understood by the water permitting programs and provides clarity as to when it is appropriate to reopen a water discharge permit.

DWWM concurs with your request and Section H of the permit has been revised to read: “If there is evidence indicating reasonable potential or realized impacts on water quality due to any stormwater discharge authorized by this general permit, the owner or operator of such discharge may be required to obtain an individual permit or alternative general permit in accordance with Section G.1. of this permit, or the permit may be modified to include different limitations and/or requirements.”

65. *Section B. Schedule of Compliance: Compliance with this General Permit and the approved Stormwater Pollution Prevention Plan is required upon the beginning of the construction project.* The “beginning of the construction project” is not well-defined and is open to interpretation. CEC suggests that the section be revised to state that compliance with the General Permit and SWPPP is required upon commencement of the first phase of earth disturbance (i.e. grubbing operations).

DWWM believes that the definition of construction activity found in E.1. adequately addresses this comment.

66. *C.3. Duty to Mitigate: The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit, which has a reasonable likelihood of adversely affecting human health or the environment.* The term “reasonable” is used throughout the document and is ambiguous and open to interpretation. CEC suggests providing a definition of reasonable in the definition section or further define the language at this location to eliminate this ambiguity.

As noted in 47CSR10.3.2.c., “When issuing permits required under the State Act but not required by NPDES, the chief may follow the procedures set forth in this series.” DWWM has chosen to follow this series to issue this State permit. The above language came directly from 47CSR10 and will not be changed.

67. *C.4. Permit Actions: This permit may be modified, revoked and reissued, suspended, or revoked for cause.* CEC suggests that language be added that the decision to revoke or suspend a permit can only be made by the Director. This language will provide guidance to the industry and regulators regarding those individuals authorized make the final decision on the revocation and suspension of permits.

As noted in 47CSR10.3.2.c., “When issuing permits required under the State Act but not required by NPDES, the chief may follow the procedures set forth in this series.” DWWM has chosen to follow this series to issue this State permit. The above language came directly from 47CSR10 and will not be changed.

68. *C.10.a. To enter upon the permittee’s premises in which an effluent source or activity is located, or where records must be kept under the conditions of this permit;* CEC suggests that the word “effluent” be removed from this section. According to the Fact Sheet, projects authorized under

this permit are not subject to effluent limits. CEC suggests the term “stormwater point source discharge” be used instead.

As noted in 47CSR10.3.2.c., “When issuing permits required under the State Act but not required by NPDES, the chief may follow the procedures set forth in this series.” DWWM has chosen to follow this series to issue this State permit. The above language came directly from 47CSR10 and will not be changed. It should also be noted that discharge from a stormwater outlet is effluent.

69. *C.10.c. To inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit;* CEC suggests removal of the reference to monitoring and control equipment. It is unclear as to what monitoring and control equipment is referencing. Section E of the document states that monitoring is not required for construction activities under this permit (unless specified by the Director). If this section is referring to inspections of stormwater discharges, these inspections can typically be completed by visual observation rather than monitoring equipment.

As noted in 47CSR10.3.2.c., “When issuing permits required under the State Act but not required by NPDES, the chief may follow the procedures set forth in this series.” DWWM has chosen to follow this series to issue this State permit. The above language came directly from 47CSR10 and will not be changed.

70. *C.10.d. To sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the State Act, any substances or parameters at any location.* CEC suggests clarification of this section. Since projects authorized under this permit are not subject to effluent limits, it is unclear how permit compliance could be determined through sampling or monitoring. CEC suggests this section be revised to the following: “To visit the site at reasonable times and complete visual observations to confirm the adequacy and functionality of stormwater and erosion and sedimentation control BMPs as required by the terms of the permit”. In addition, further clarification should be provided that “Compliance with the permit is defined by proper and adequate use of stormwater and erosion and sedimentation control BMPs to prevent sediment-laden runoff from leaving the project area.”

As noted in 47CSR10.3.2.c. “When issuing permits required under the State Act but not required by NPDES, the chief may follow the procedures set forth in this series.” DWWM has chosen to follow this series to issue this State permit. The above language came directly from 47CSR10 and will not be changed.

71. *C.11. Permit Modification: This permit may be modified, suspended, or revoked in whole or in part during its term in accordance with the provisions of Chapter 22, Article 11 of the Code of West Virginia. Any permittee wishing to modify his coverage under this permit shall submit such request at least 45 days prior to the commencement of the proposed action for modification if no public notice period is required. A modification that will have a public notice period must be submitted at least 90 days prior to construction to allow for the public notice procedure.* CEC suggests that the timing be reduced to 7-14 calendar days prior for a permit modification. Due to the nature of this work, construction delays resulting from a 45 or 90 day period to obtain a permit modification could have significant impact on the schedule and cost to operators. A minor revision to a BMP, for example, should not require this amount of time to review and grant the modification.

DWMM will make every effort to expedited modification reviews but cannot agree to the 7-14 calendar day as requested by this comment. If a modification has to go to public notice it will be a 30 day notice period and then additional time to respond to any comments.

72. C.12. *Water Quality: The effluent or effluents covered by this permit are to be of such quality so as to not cause violations of applicable water quality standards.*

Clarification should be provided as to the water quality standards that are being applied to this permit. As previously referenced, the Fact Sheet states that projects authorized under this permit are not subject to effluent limitations. As such, the ability to ensure compliance with these undefined standards will be problematic, if not impossible.

Effluent limitations and water quality violations do not have the same meaning. According to 47 CSR 2.21 "Water quality standards" means the combination of water uses to be protected and the water quality criteria to be maintained by these rules. According to 47 CSR 10.2.17 "Effluent limitation" means any restriction established under State or Federal law on quantities, discharge rates, concentrations or other specified units of measure of pollutants that are discharged from point sources into waters of the State.

73. C.15 *Outlet Markers: An outlet marker shall be posted during the term of General Permit coverage in accordance with Title 47, Series 11, Section 9 (Special Rules) of the West Virginia Legislative Rules.* Providing outlet markers at each discharge point for a linear project would prove difficult and onerous due to the potential number of discharge points, and unnecessary due to the nature of these projects and quick timing of construction.

DWWM realizes the difficulty that this may cause but 47CSR11-9.2. states, "Each holder of a Water Pollution Control Permit..." since this a Water Pollution Control Permit the language as written in the regulation must be used in the General Permit.

74. It is unclear why the "Bypass" and "Upset" definitions are included in Section D. rather than with the other definitions included in the permit. CEC suggests these definitions be moved along with all the other definitions to the beginning of the document, as stated previously.

DWWM included the boiler plate language used in all permits and outlined in 47CSR10. This language will remain unchanged.

75. D.3.a.1. *"Bypass" means the intentional diversion of waste streams from any portion of a treatment facility; and-* It is unclear why this term, as defined, is included in the permit documents. The definition as stated is unrelated to stormwater discharges. CEC suggests revising the definition as follows: *"Bypass" means the intentional diversion of sediment-laden runoff from a project's erosion and sediment control BMPs*".

As noted in 47CSR10.3.2.c., "When issuing permits required under the State Act but not required by NPDES, the chief may follow the procedures set forth in this series." DWWM has chosen to follow this series to issue this State permit. The above language came directly from 47CSR10 and will not be changed.

76. D.3.a.2 B *"Severe property damage" means substantial physical damage to property, damage to the treatment facility which causes them to become inoperable, or substantial and permanent loss of natural resources that can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.* The definition of severe property damage should not be limited to situations regarding a bypass. CEC suggests revising the definition to remove "that can reasonably be expected to occur in the absence of a bypass."

As noted in 47CSR10.3.2.c., "When issuing permits required under the State Act but not required by NPDES, the chief may follow the procedures set forth in this series." DWWM

has chosen to follow this series to issue this State permit. The above language came directly from 47CSR10 and will not be changed.

77. *D.3.b. Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. As previously stated in these comments, the Fact Sheet states that projects authorized under this permit are not subject to effluent limits. Thus, the “effluent limitations to be exceeded” should be replaced with “sediment-laden discharges to leave the project site untreated”.*

As noted in 47CSR10.3.2.c., “When issuing permits required under the State Act but not required by NPDES, the chief may follow the procedures set forth in this series.” DWWM has chosen to follow this series to issue this State permit. The above language came directly from 47CSR10 and will not be changed.

78. *D.3.c. Notification of bypass D.3.c.1.If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least 10 days before the date of the bypass. D.3.c.2.If the permittee does not know in advance of the need for bypass, notice shall be submitted as required in F.2.a. of this permit. Due to the nature of this work, the need for a bypass would likely be identified during construction and be required immediately. As such, notice would be extremely difficult and could delay the proper handling of stormwater runoff which may result in adverse effects to the environment. Reporting as required under F.2.a. seems unrelated to a stormwater bypass, as those requirements refer to the “designated spill alert telephone number”. It would be unnecessary to require an operator to report to the Department’s spill alert line for a temporary bypass if sediment-laden discharges are handled immediately.*

As noted in 47CSR10.3.2.c., “When issuing permits required under the State Act but not required by NPDES, the chief may follow the procedures set forth in this series.” DWWM has chosen to follow this series to issue this State permit. The above language came directly from 47CSR10 and will not be changed.

79. SECTION E. MONITORING AND REPORTING, E.1. Definitions

CEC feels that providing the definitions at the beginning of the permit document would be beneficial to clarify the terms prior to their use in the permit document and to provide one collective location for all definitions included in the document. In addition, it is unclear why definitions would be listed under a Section identified as Monitoring and Reporting.

DWWM’s intent is to be as consistent as possible with the WV/NPDES Permit for Stormwater Associated with Construction Activities. The current layout of that permit has not been a source of confusion and DWWM has chosen to add the word definitions to Section E.

80. *“Best management practices” (BMPs) means schedules of activities, prohibitions of practices, maintenance procedures, other management practices and various structural practices such as but not limited to silt fence, sediment traps, seeding and mulching, and rip-rap used to prevent or reduce erosion and sediment runoff and the pollution of surface waters of the State. BMPs also include treatment requirements, operating procedures and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage. CEC suggests that the last sentence be removed as it does not apply to the projects that would be authorized under this permit.*

As noted in 47CSR10.3.2.c., “When issuing permits required under the State Act but not required by NPDES, the chief may follow the procedures set forth in this series.” DWWM

has chosen to follow this series to issue this State permit. The above language came directly from 47CSR10 and will not be changed.

81. *“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. The “plan” is broadly defined as any announcement or piece of documentation or physical demarcation indicating construction activities may occur on a specific plot.* Further clarification should be provided in this definition, which as stated, is vague. In addition, this language suggests that separate projects could be considered as a single plan, regardless of timing. CEC suggests that language be added that individual projects, regardless of the “plan”, can be authorized separately under this permit. The nature of these projects is such that it would be impracticable to authorize multiple projects under one permit due to project development schedules.

The common plan of development definition was developed by US EPA to prevent projects less than one acre but part of a common plan from avoiding permit coverage. No change will be made.

82. *“Control” is a best management practice such as erosion control or sediment control that will reduce sedimentation on a construction project.* CEC suggests this definition be revised as follows: “Control” is a best management practice such as erosion control or sediment control that will reduce erosion on and sedimentation from a construction project.

DWWM believes the definition is clear and no change has been made to the definition.

83. *“Construction Activity” means land disturbance operations such as grubbing, grading, filling, and excavating during site development for residential, commercial or industrial purposes. This includes, but is not limited to, access roads, borrow and spoil areas and equipment lay down or staging areas.* CEC suggests that this definition be revised to apply to the projects that would typically be authorized under this permit. The “residential, commercial, or industrial purposes.” should be replaced with “oil and gas operations.”

To remain consistent DWWM has decided not to change this definition.

84. *“Establishment” means an industrial establishment, mill, factory, tannery, paper and pulp mill, mine, colliery, breaker or mineral processing operation, quarry, refinery, well and each and every industry or plant or works in the operation or process of which industrial wastes, sewage or other wastes are produced.* This definition does not appear to apply to the projects that would be authorized under this permit. As such, CEC suggests that it be removed.

Please see response to comment number 5.

85. *“Groundwater” means the water occurring in the zone of saturation beneath the seasonal high water table or any perched water zones.* CEC suggests this definition be revised as follows: “Groundwater” means subsurface water under a condition of pressure saturation. It is CEC’s opinion that the seasonal high water table is not directly related to groundwater and that perched water zones are actually a part of groundwater.

Groundwater is defined in Chapter 22-12-3.f and will not be changed.

86. *“Intermittent stream” means a stream that has no flow during sustained periods of no precipitation and does not support aquatic life whose life history requires residence in flowing waters for a continuous period of at least six months.* CEC suggests the following revised

definition: "Intermittent stream" means a stream has flowing water during certain times of the year when groundwater provides water for stream flow. During dry periods, intermittent streams may not have flowing water. Runoff from rainfall is a supplementary source of water for stream flow.

DWWM has deleted this definition since it is not used in the General Permit.

87. CEC suggests adding the following definitions related to streams:

- a. "Perennial Stream" means a stream has flowing water year-round during a typical year. The water table is located above the streambed for most of the year. Groundwater is the primary source of water for stream flow. Runoff from rainfall is a supplementary source of water for stream flow.
- b. "Ephemeral Stream" means a stream has flowing water only during, and for a short duration after, precipitation events in a typical year. Ephemeral streambeds are located above the water table year-round. Groundwater is not a source for stream flow. Runoff from rainfall is the primary source of water for stream flow.

Please see the response to comment number 86.

88. "Pollutant" means industrial waste, sewage or other wastes. For the purpose of this permit, CEC suggests that this definition be revised as follows: "Pollutant" means sediment.

This definition is from Chapter 22-11-3.17 and will not be changed.

89. "Pre-development" means the condition of the land, the amount and health of the ground cover and vegetation prior to development. CEC suggests removing the word "development" from the definition and replacing it with "construction".

To remain consistent with other permits DWWM has decided not to make the suggested change.

90. "Sediment" means any particulate matter that can be transported by fluid flow and which eventually is deposited as a layer of solid particles on the bed or bottom of a body of water or other liquid. CEC suggests that this definition be revised as follows: "Sediment" means any particulate matter that can be transported by wind, water, or ice.

DWWM has decided not to make the suggested change.

91. "Sediment basin" means a temporary structure consisting of an earthen embankment, or embankment and excavated area, located in a suitable area to capture sediment-laden runoff from a construction site. A sediment basin reduces the energy of the water through extended detention (48 to 72 hours) to settle out the majority of the suspended solids and sediment and prevent sedimentation in waterways, culverts, streams and rivers. Sediment basins have both wet and dry storage space to enhance the trapping efficiency and are appropriate in drainage areas of five acres and greater. CEC suggests revising the second sentence as follows: "A sediment basin reduces the energy of the water through extended detention (48 to 72 hours) to settle out the majority of the suspended solids and sediment and significantly reduce the likelihood of sedimentation..." A sediment basin will not prevent all possibility of sedimentation as a majority, but not all, of suspended solids and sediments are settled out in the sediment basin.

DWWM has decided not to make the suggested change.

92. "Stormwater management facilities" means structures such as ponds, basins, outlets, ditches, velocity dissipaters, infiltration trenches and basins, extended detention basins and ponds, and

any other structure used to control the quality and quantity of stormwater from a development project. CEC suggests the following language: “used to control the quality and quantity of stormwater” be revised to “used to control the rate, reduce the volume, and improve the quality of stormwater runoff”.

DWWM has decided not to make the suggested change.

93. *“Trout Streams” means any waters which meet the definition of 47CSR2-2.18. (Requirements Governing Water Quality Standards).* CEC requests the trout stream definition be referenced to 47CSR2-2.19. The section currently reference, 47CSR2-2.18, actually defines “Total Recoverable”.

DWWM concurs with this comment and the change will be made to the permit.

94. *F.2.a. The permittee shall report any noncompliance which may endanger health or the environment immediately after becoming aware of the circumstances by using the Department’s designated spill alert telephone number ((800) 642-3074).* CEC suggests the Department provide examples of what “may endanger health or the environment” or further define this as “severely endanger health and the environment”. CEC suggests that the Department consider revising this section to indicate that the permittee contact the Department immediately after taking emergency steps to limit the effect of the non-compliance. The protection of public health and the environment should take priority over alerting the Department to the noncompliance.

As noted in 47CSR10.3.2.c., “When issuing permits required under the State Act but not required by NPDES, the chief may follow the procedures set forth in this series.” DWWM has chosen to follow this series to issue this State permit. The above language came directly from 47CSR10 and will not be changed.

95. *G.4.b.5. Within 24 hours of filing an NOI (one to less than three acres) or a Site Registration Application (three acres or more) with DWWM, all projects shall display a sign.....*It seems unreasonable to only allow 24 hours. CEC suggests this Section be revised to state “Within 48 hours of filing an NOI...”

DWWM believes this requirement is not overly burdensome since all other construction activities have been meeting this standard since 2002 under the WV/NPDES Permit for Stormwater Associated with Construction Activities.

96. *G.4.c. The permittee shall modify, using forms provided by DWWM, the SWPPP whenever there is a change in design, construction, scope of operation, or maintenance, which has the potential to adversely impact the surface waters of the State, or if the SWPPP proves to be ineffective in achieving the general objectives of controlling pollutants in stormwater discharges associated with construction activities.* It is unclear why DWWM forms would be required for modifications to the SWPPP when the document itself could be modified. CEC suggests that the DWWM form requirement be removed.

As noted in 47CSR10.3.2.c., “When issuing permits required under the State Act but not required by NPDES, the chief may follow the procedures set forth in this series.” DWWM has chosen to follow this series to issue this State permit. The above language came directly from 47CSR10 and will not be changed.

The required modification form can be found at the following link:
<http://www.dep.wv.gov/WWE/Programs/stormwater/csw/Pages/cswdocs.aspx>

97. *G.4.e.1.B. Estimates of the total area of the site and the part of the site that is expected to undergo excavation or grading and the total amount of excavation by cut and fill;*

It is unclear why and seems unnecessary that the Department would need to know the total amount of excavation by cut and fill. For example, it is uncommon to calculate earthwork volumes for linear projects as the project area is returned to original grade. The proposed area of earth disturbance and proposed project schedule are much more relevant in determining the impact of a project. CEC suggests that this requirement be removed.

This condition is appropriate for this General Permit. It is not uncommon for linear projects such as sewer and water line projects to have waste material and as such must account for the waste areas. Linear projects may also have access road and lay down areas associated with them that may have cut or fills. It should be noted that this permit is not only for linear projects. DWWM will keep this requirement as noted in the draft General Permit.

98. *G.4.e.2.A.i.d. Clean water diversions must be stabilized prior to becoming functional.*

This should be clarified that stabilization in the form of an erosion control blanket/liner or riprap is acceptable, as the time to establish vegetation as the form of stabilization will most likely not be available.

DWWM feels the requirement as written is adequate and does not want to limit the method that may be proposed to meet this requirement.

99. *G.4.e.2.A.ii. Structural practices-* Technical guidance on the design of structural controls should not be part of the permit document itself, as this information is currently contained in the West Virginia Erosion and Sediment Control Best Management Practice Manual. CEC suggests this section be removed from the permit document.

By having this requirement in the General Permit it becomes a permit condition as desired by DWWM, having it solely in the West Virginia Erosion and Sediment Control Best Management Practice Manual would only make it guidance.

100. *G.4.e.2.A.ii.h. All trapped sediments will be disposed on an upland area where there is no chance of entering nearby streams.* CEC suggests adding “and stabilized through seeding and mulching or other stabilization method” to this sentence.

DWWM believes Section G.4.e.2.A.i Vegetative practices adequately address this comment.

101. *G.4.e.2.A.ii.j. No sediment-laden water will be allowed to leave the site without going through an appropriate best management practice.* This sentence seems out of place in this Section under Structural Practices. CEC suggests moving it to Section G.4.e.2. Controls.

DWWM believes that appropriate best management practices are structural practices.

102. *G.4.e.2.A.ii.k. Hay or straw bales are not acceptable BMPs.* CEC suggests revising this language as follows: “The use of hay or straw bales as silt barrier devices without incorporating additional best management practices is not an acceptable BMP.” Hay and straw bales when used in conjunction with jute mats, polymers, flocculants, etc. can provide functional BMPs. The permit should not completely ban the use of hay or straw bales in all instances.

DWWM feels that hay or straw bales are not acceptable BMPs and have not changed this condition.

103. *G.4.e.2.B. Stormwater management plan-A description of measures that will be installed during construction to control pollutants in stormwater discharges after the project is completed shall be included in the SWPPP. The completed project shall convey stormwater runoff in a manner that will protect both the site and the receiving stream from post-construction erosion. All surface waters and other runoff conveyance structures shall be permanently stabilized as appropriate for expected flows.* CEC suggests that the third sentence be revised as follows: "All surface water and other runoff conveyance structures that were disturbed as part of the project, shall be permanently....."

DWWM believes the requirement is adequate as written and will not be changed in the final General Permit.

104. *G.4.e.2.B. Stormwater management plan Projects installing substantial impervious surface in post development conditions will be required to provide pre-post development discharge information for an appropriate design storm. Projects located in areas that have local government requirements and/or criteria for post development stormwater management must meet those requirements and/or criteria. Compliance with this general permit does not assure compliance with local codes regulations, or ordinances.* The phrases "substantial impervious surface" and "appropriate design storm" are vague. For projects located in areas where the local government does not have established stormwater criteria, this document does not provide clear direction on the stormwater rate and volume requirements for projects authorized under this permit. CEC suggests that the Department provide additional information to define the minimum design parameters (storm events to be controlled, definitive rate requirements, volume requirements, etc.) required to establish a level "playing field" for the industry (which was one of the goals of the permit stated in the Background Section of the Fact Sheet).

Section G.4.e.2.B has been modified to address the commenters concerns. DWWM did not attempt to establish specific stormwater management criteria to allow flexibility in complying with this section. DWWM expects that few facilities subject to coverage under the proposed General Permit will have concerns in regard to local government post construction stormwater requirements.

105. *G.4.e.2.C.vi. Recordkeeping and internal reporting procedures- Incidents such as spills, leaks and improper dumping, along with other information describing the quality and quantity of stormwater discharges should be included in the records.* Clarification should be provided regarding the expectation of the Department relative to record keeping of the quality and quantity of stormwater discharges. CEC suggests this be accomplished through documentation of the visual observation of stormwater discharges and best management practice installations.

DWMM concurs with this statement.

106. The four exceptions listed on page 1 are overly broad. Disturbances of almost one acre can produce very substantial amounts of stormwater runoff, and may be contaminated with a diverse range of chemicals, sediments, and other pollutants. There does not seem to be a scientifically valid reason to offer a size exemption, certainly not one as large as one acre. The issue should be whether stormwater runoff occurs. We recommend this exception be re-written to read. "1. Operations that result disturbance too small to generate measurable stormwater discharges, which are not part of a larger common plan of development." Methods to quantify the amount of sedimentation should use standard approaches such as the Revised Uniform Soil Loss Equation (RUSLE), while quantification of stormwater discharges should use methods that consider infiltration rates, slope, and area of hardened or disturbed surfaces.

DWWM believes that exceptions as written are appropriate. In regards to the acre threshold, this is consistent with WV/NPDES Permit for Stormwater Associated with

Construction Activities, which has been approved by EPA, and DWWM believes this threshold is appropriate for this General Permit.

107. Page 2, first paragraph, we again recommend that the reference to a new disturbance of “one acre or more” be revised to require coverage for any new disturbance that creates measurable stormwater discharges not captured by existing stormwater management systems.

See response to comment 106.

108. Section A. We support inclusion of these terms. Legislation adopted earlier this year appears to have the effect of limiting enforcement of permit conditions to those conditions actually included in each permit, thus permits must now incorporate all applicable water pollution rules and standards, because the Legislature appears to want the permit language to take precedence over state regulations or statutes.

No response needed.

109. We object to the default condition specified in Section C.2. If a permit expires, dischargers under an expired permit constitute violations of the Clean Water Act. While it is appropriate to offer an administrative continuance of the old permit if timely application for renewal or replacement has been made, the current language rewards the lapsed permittee with simple continuation without penalty for his/her failure to remain up to date. We recommend that the draft permit be revised to state that operating with an expired permit is a violation of state and federal law and may subject the operators to penalties or compliance orders.

A permittee cannot reapply for permit coverage until the General Permit is reissued. The reissued General Permit will have a date requirement that existing permittees must have new applications submitted for continued permit coverage. Failure to submit the renewal application by the required date would be a violation of state law and may subject the operators to penalties or compliance orders.

110. Section D.3.b. While it is reasonable to allow limited bypass for essential maintenance, this creates a significant incentive to bypass treatment. The appropriate counter to such temptation should be the requirement to disclose such bypasses, thus, we recommend that the exemptions from the notification requirements of sections D.3.c. and D.3.d. be eliminated. The opportunity to cover up such bypasses creates an inexorable temptation for abuse.

As noted in 47CSR10.3.2.c., “When issuing permits required under the State Act but not required by NPDES, the chief may follow the procedures set forth in this series.” DWWM has chosen to follow this series to issue this State permit. The above language came directly from 47CSR10 and will not be changed.

111. Page 7. Section E. We recommend that the first sentence (Monitoring of discharges is not required...) be removed. The history of problems with the Oil and Gas industry makes it clear that monitoring and enforcement is needed.

Monitoring in this sentence means sampling of the stormwater discharge. Sampling will not be required by this General Permit and the sentence will remain as written.

112. Page 8. Amend the definition of “Control” to read “is a best management practice such as erosion control or sediment control that will reduce sedimentation resulting from a construction project.” Limiting “sedimentation on a construction project” is probably not relevant to stormwater management unless such sedimentation actually gets off site or into a stream.

DWWM believes the definition of “Control” is appropriate and will not be changed.

113. The definition of ‘disturbed area’ appears to contradict the definition of “clearing” in that the definition of “clearing” implies that removal of vegetation does not disturb the soil. We recommend that the definition of “disturbed area” include “vegetation removal” and that the definition of “clearing” be dropped. Oil and Gas activity has a history of occurring on steep slopes and vegetation clearing in such areas inevitably results in off-site sedimentation.

DWWM believes it is appropriate to distinguish between clearing and construction activities. Clearing is not a construction activity and as such would not need to be covered under this General Permit.

114. We recommend that the definition of “final stabilization” be amended by inserting the word “by” after “covered” in the first line, and by substituting the words ‘permanent native vegetation’ for the words “perennial grasses” in the third line. In many cases, the use of perennial grasses has become an excuse for planting exotic invasive species in violation of the noxious plant pest rules.

DWWM agrees that “by” needs to be added after “covered”. DWWM will add language to the fact sheet about the noxious plant pest rules.

115. Page 9-10. We again object to the limitation on sites less than one acre in the definitions of “minor construction activity”, ‘Notice of Intent’, and “Site Registration Application forms”. The size of the area disturbed is not particularly relevant, and a one-acre size is simply not adequately protective.

See response to comment 106.

116. Page 13, line 1. It is not clear why Groundwater Protection Plans should not be required to be submitted to the Division of Water and Waste Management for review. We recommend that all such plans for Oil and Gas sites be reviewed, as this industry has a history of problems that warrant additional oversight.

DWWM believes that the Groundwater Protection Plan should be completed by the contractor and be onsite for review by DWWM during site inspections. The contractor is usually not chosen at the time DWWM reviews the Stormwater Pollution Prevention Plan and as such the Groundwater Protection Plan would be incomplete at best.

117. Page 13, section G.4.b.3, and G.4.b.5. We again recommend that the limitations of one acre be removed. Furthermore, we recommend that all oil and gas sites submit Plans at least 90 days in advance to allow time for public notification and review procedures.

See response to comment 106. DWWM believes the review timeframes listed in the draft General Permit are adequate and once again are consistent with WV/NPDES Permit for Stormwater Associated with Construction Activities.

118. Page 15, Section G.4.e. Again, omit reference to sites “one or more acres”.

See response to comment 106.

119. Page 16, section G.4.e.2.A.i.b. We recommend that this section be deleted. Allowing an exemption because the operator “intends” to resume activity within three weeks could turn into an opportunity for ignoring the requirements to stabilize sites. At a minimum, some type of

temporary stabilization (mulching, geotextiles, etc.) should be required. An awful lot of rain can fall in 21 days.

It takes approximately 21 days for seed to germinate and DWWM believes this condition is appropriate. If an area is not actively worked in 21 days and has not been temporarily seeded and mulched this would be considered a permit violation.

120. Page 17, section G.4.e.2.A.ii.b. A sediment basin “3600 cubic feet per drainage acre” is grossly inadequate. That translate to one acre-inch of storage, and West Virginia frequently endures rain great the one inch per day, yet the section provides that the basin half that volume must be dewater over 2-3 days. This effectively means that the sediment basin will not retain sediment during most of the major rain events. We recommend that the storage volume requirement be increased at least 4-fold. Even DEP’s guidance for surface mines recommend a storage capacity 50% higher than what this section proposes.

This is consistent with WV/NPDES Permit for Stormwater Associated with Construction Activities and DWWM believes this threshold is appropriate for this General Permit.

121. Page 19, section G.4.e.2.C.iv. We applaud and support the requirements for quarterly employee training.

No response needed.

122. Page 19, section G.4.e.2.C.vi. Record-keeping. While it is, of course, appropriate to require that inspection and maintenance record be kept on site, they should also be reported to DEP. Given the lack of inspectors, it is unlikely that on-site records would be reviewed by DEP unless and until an accident occurs that results in public complaints. Too many “accidents” have occurred with this industry in the past to justify such a trusting approach. All inspection and monitoring records should be reported to DEP, so that office review can identify potential problems BEFORE they result in significant pollution.

DWWM believes it more appropriate that these records be onsite for review by DWWM during inspections. There are more inspectors than permit reviewers to review these records.

123. Page 19-20, section G.4.f. The provisions in the last sentence that “any portion” of a Stormwater or Groundwater protection plan could be kept from the public as “confidential” is absurd. The public needs to be able to review these plans, as they are the stakeholders most directly affected. We recommend that this sentence be omitted.

As noted in 47CSR10.3.2.c., “When issuing permits required under the State Act but not required by NPDES, the chief may follow the procedures set forth in this series.” DWWM has chosen to follow this series to issue this State permit. The above language came directly from 47CSR10 and will not be changed.

124. Page 20, Section J. Again, the use of “grass” as permanent stabilization should not preclude permanent native vegetation.

DWWM agrees permanent stabilization should not preclude permanent native vegetation. DWMM will note in the fact sheet that permanent native vegetation meets the definition of permanent stabilization.

125. The Draft Permit states (page 21) that it is being issued “in accordance with the provisions of Chapter 22, Article 11 of the Code of West Virginia.” This statement appears to conflict with the

provisions of W. VA. Code 22-6-7 and 22-6A-5(a)(4), which contemplate that any permit governing discharges from oil and gas activities, including any National Pollutant Discharge Elimination System permit, be issued pursuant to those sections. If the Draft Permit is issued pursuant to W. Va. Code 22-6-7 and 22-6A-5(a)(4), what would be the mechanism for appeal? We respectfully request that the DEP give consideration to these issues and provide an explanation of its position.

The statement in the Draft Permit that it is being issued “in accordance with the provisions of Chapter 22, Article 11 of the Code of West Virginia” is a bit too broad and should be modified to state: “This Permit is being issued in accordance with W. Va. Code § 22-6-7, which is incorporated into the Horizontal Well Act by W. Va. Code § 22-6A-5(4), which grants the Secretary of the Department of Environmental Protection the authority to issue water pollution control permits. This authority is in addition to the authority vested in the Secretary to issue water pollution control permits in accordance with W. Va. Code § 22-11-8.”

Pursuant to W. Va. Code § 22-6-7(e), water pollution control permits issued to the oil and gas industry “shall be issued by the [Director] of the [Division of Water and Waste Management] in consultation with Chief of the Office of Oil and Gas . . . and shall be appealable to the Environmental Quality Board, pursuant to the provisions of section twenty-five [§ 22-11-25], article eleven, chapter twenty-two and section seven [§ 22B-1-7], article one, chapter twenty-two-b of this code.”

126. It could be asserted that the use of an access road or storage area constitutes “construction activity” lasting longer than one year.

Using an access road or storage area is not a construction activity.

127. The Public Notice from the DEP which announced that availability of the Draft Permit for public comment states that the permit would have a term of four years. However, W. Va. Code 22-11-11(c) authorizes permits to “have a fixed term not to exceed five years” We respectfully request that DEP provide for a permit term of five years instead of limiting the Draft permit to four years.

The General Permit term has been changed to 5 years.

128. The Draft Permit makes no mention of a permit fee. We concur that a permit fee may not be assessed for activities covered by the Draft Permit given the precedent in Articles 6 and 6A that only permit fees expressly authorized by statute for oil and gas operations may be imposed. For example, W. Va. Code 22-6-2(c)(10) states “[a]ll application fees required hereunder shall be in lieu of and not in addition to any fees imposed under article eleven of this chapter relating to discharges of stormwater but shall be in addition to any other fees required by the provisions of this article.”

See response to comment 125 for clarification on the authorizing statute. As stated previously, this is a State Permit and the permit fees, annual permit fees; modification fees will be in accordance with 47 CSR 26.

129. The first sentence of the Draft Permit that begins “This is to certify...” is confusing and does not make sense. This sentence should be rewritten to clarify that a permit should only be required where construction activity results in a point source discharge from the construction site to waters of the State. Thus, for example, construction activity that only resulted in sheet flow of storm water across land would be exempted from the requirement to comply with the Draft Permit.

This is a State permit. This permit is required only if you have or you are proposing to have a “point source” discharge into the “Water of State”. According to 22-11-3 “Point source” means any discernible, confined, and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, concentrated animal feeding operation, well, discrete fissure, container, rolling stock or vessel or other floating craft from which pollutants are or may be discharged. Stormwater discharges from construction activities have been defined as a discharge of pollutants in Section 2.14.b. of 47CSR10.

130. In the event that the Draft Permit is properly adopted and approved, we respectfully urge DEP to incorporate language to any final general permit that expressly states that such permit requirements do not apply to projects on which construction activities commenced prior to the effective date of such final general permit.

The draft General Permit already states “Sites under active construction prior to the effective date of this General Permit are not required to apply for coverage. However, any new disturbance of an acre or more is required to obtain coverage under this General Permit.”

131. C.11 Permit Modification- This provision fails to distinguish the circumstance under which public notice will be required and those under which no public notice is required. In addition, we believe that the time periods specified for advance notice are not justified given the lack of complexity of the activities covered by the draft permit. We recommend that the time periods be revised to 30 days and 45 days respectively.

If a proposed modification changes the grading phase of construction to one year or more, or increases the disturbed area to 100 or more acres or adds a discharge point to Tier 3 waters then the proposed modification would have to go to public notice. DWWM disagrees that there is a lack of complexity to all permit modification and many are as complex as the original application. DWMM will make every effort to expedited modifications.

132. D.4.b. Effect of Upset- We recommend that the language in D.4.a (i.e., “noncompliance with the terms and conditions of the permit and the Stormwater Pollution Prevention Plan) be incorporated into D.4.b. in lieu of “noncompliance with such technology-based effluent limitations.” The proposed language change creates consistency between the definition of “Upset” and the “Effect of an upset” and avoids confusion created by the use of significantly different terminology. The language of D.4.b. is particularly inappropriate because there are not “technology-based permit effluent limitations” in the Draft Permit.

DWWM agrees to make the suggested change as noted above.

133. E.1 Definitions- “Common Plan of Development”- is the same definition used in the NPDES GP but omits the phrase “included in this definition are most subdivisions.” The definition cannot be simply applied in the context of oil and gas construction activities that are subject to the Draft Permit. Because activities regulated by OOG are exempt from the Draft Permit, the common plan of development” phrase must not include any such work performed pursuant to a permit for well work or certificate for an impoundment under the regulation of the OOG. In addition, this definition should be specifically limited by the time and location such as activity planned to take place within 6 months and ½ mile of the activity that is the subject of the Draft Permit. Natural gas development programs can and do occur over a period of years and activity can be separated by significant distances. The definition must be carefully drafted to avoid unnecessary obstacles to the State’s natural resource development.

Activities regulated under the Department of Environmental Protection Office of Oil and Gas are exempt from this General Permit and as such cannot be considered part of a Common Plan of Development. The suggested change to timeline and proximity is in conflict with the intent of the definition. For example, a half-acre waste site may be needed for a project. The waste site may be several miles from the project. The disturbance of this waste site must be included in the total disturbed area for that project. DWWM will leave the definition of Common Plan of Development as written in the draft General Permit.

134. E.1. Definitions- "Construction activity"- this definition incorporates the new phrase "equipment lay down and staging areas" which should not be included as part of the definition. The definition identifies the activities that constitute "land disturbances" to include "grubbing, grading, filling and excavating" which establish the condition which are more likely to result in discharges of stormwater across areas where loose soil is likely to be picked up. The sentence "This includes, but not limited to, access roads, borrow and spoil areas and lay down or staging areas" is inappropriate. Each of these terms describes a type of land use and not an "activity". An equipment storage area does not involve land disturbance and should not be part of the definition of construction activity. The definition of "construction activity" should be modified to read as followed: "Construction Activity means land disturbance operations such as grubbing, grading, filling, and excavating during the site development for oil and gas filed activities subject to this General Oil & Gas Activities Permit, which may include, but not be limited to access roads, and borrow and spoil areas where land disturbances occurs."

Many equipment storage areas have land disturbances associated with their development and require reclamation after construction is complete. This disturbance must be included in the total disturbance for the project. If no land disturbance will be taking place in the establishment of the equipment storage area then there would be no disturbance to report. DWWM will leave the definition of Common Plan of Development as written in the draft General Permit.

135. E.1. Definitions- "Disturbed area"- this definition also adds the phrase "equipment lay down or staging areas" and should be deleted for the reasons explained in the comment above. The other items listed in the series include "utility installation, road building, mass grading and site development which are activities rather than a use description. The new phrase should be deleted from the definition of "disturbed area."

Please see response to comment number 134.

136. E.1. Definitions- "Notice of Intent"- this definition incorporates a reference to "Construction Stormwater General Permit" which should be modified to refer to the name of the Draft Permit and separate forms should be developed for use in submitting wither a "notice of intent" or "site registration application form." In addition, the last sentence of the definition includes the phrase "construction activities one year or longer," which should be modified to use the following language "a grading phase of construction that will last one year or longer" as found in G.4.b.3. of the Draft Permit.

DWWM agrees to make the suggested changes and there will be separate applications for this General Permit.

137. E.1. Definitions- "Site Registration Application Form"- this definition should be modified in the same manner as described above to replace "construction activities" with the phrase "a grading phase of construction that will last."

DWWM agrees to make the suggested changes and there will be separate applications for this General Permit.

138. G.4.e.2.B. - contains the sentence "Projects installing substantial surface in post development conditions will be required to provide pre-post development discharge information for an appropriate design storm." This sentence appears to be a carry over from a general permit governing mall or residential subdivision construction where paved areas are part of the final planned development. Oil and gas operations do not generally involve paving and leaving significant areas of earth covered by paving or some other impervious surface. We respectfully request that the last sentence of the first paragraph of the referenced provision be deleted. Likewise we respectfully request that the last sentence of the third paragraph of the reference provision be deleted as unnecessary and duplicative.

Section G.4.e.2.B has been modified to address the commenters concerns. DWWM did not attempt to establish specific stormwater management criteria to allow flexibility in complying with this section. DWWM expects that few facilities subject to coverage under the proposed General Permit will have concerns in regard to local government post construction stormwater requirements.

139. G.4.e.2.C.iv. - requires employee training "on a quarterly basis." We suggest that the training provision be modified by inserting the phrase "while construction activities are occurring" after the phrase "on a quarterly basis" in the last sentence of this provision.

DWWM agrees to make the suggested change as noted above.

140. An exemption should be provided for work that is carried on under certificates and approvals issued by the Federal Energy Regulatory Commission (FERC), which regulates all aspects of interstate gas transmission systems. In addition to compliance with state and federal law, FERC projects must comply with the FERC's Upland Erosion Control, Revegetation and Maintenance Plan ("Plan") and Wetland and Waterbody Construction and Mitigation Procedures ("Procedures"). A copy of the Plan is attached with these comments. The Plan addresses all aspects of erosion and sediment control for pipeline and compressor station construction projects. FERC projects also require the developer to retain third-party environmental inspectors to ensure compliance with the Plan and any other environmental conditions imposed by the FERC during the certificate process. In short, the FERC highly regulates the environmental aspects of interstate pipeline projects. As such, any effort by the DEP to regulate interstate gas transmission projects is duplicative, administratively burdensome and completely unnecessary.

DWWM believes it is in the best interest of protecting water quality in state waters that the suggested exemption not be included in the draft General Permit.

141. In addition to these practical reasons for exempting FERC projects from the permitting requirements, there is also a significant legal reason for establishing the exemption. Specifically, the Natural Gas Act preempts state permits and requirements that unduly interfere with or disrupt FERC approved projects. *See Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988). The DEP's permit interferes with the FERC approval process by imposing an additional state requirement that has been addressed by the FERC. As discussed above, the FERC addresses erosion and sediment control during the approval and construction process, and a state permit requiring the same would interfere with the FERC process.

DWWM understand the concern raised here, however, as stated previously, this is State permit and issued according to W. Va. Code 22-11. This permit regulates any discharges of stormwater runoff from oil and gas field activities or operations associated with exploration, production, processing or treatment operations or transmission facilities, disturbing one acre or greater of land area.

142. The permit does not apply to activities that could result in violations of water quality standards. The water quality standard that is most likely to be violated is the state turbidity standard. To the extent that approved BMPs are in place, that standard does not apply. Please confirm that this permit is implementing "Best Management Practices in accordance with the State's adopted 208 Water Quality Management Plan" and that discharges from the sites covered by the terms of this permit qualify for the exclusion provided by 47 CSR 2, Appendix E, §8.33.1.

DWWM will enforce this provision the same way for this General Permit as it does for WV/NPDES Permit for Stormwater Associated with Construction Activities. If BMPs are installed but WQS violations are observed, an order or NOV may be issued to update or improve the BMPs.

143. Groundwater quality standards, and the rest of the Groundwater Protection Act (GPA), do not apply to "areas of geologic formations which are site specific to . . . [t]he production or storage zones of crude oil or natural gas and which are utilized for the exploration, development or production of crude oil or natural gas permitted pursuant to articles six . . ." *W. Va. Code* §22-12-5(i). To our knowledge, there never has been a precise delineation of this area where ground water quality standards do not apply, but we would observe that this permit cannot require compliance with the GPA to that extent.

DWWM concurs with the statement above.

144. Condition B- Schedule of Compliance- Some activities required, or duties imposed, by this permit cannot be accomplished before beginning the project. There may be some work done, such as initial clearing of a site that does not require earth disturbance. Where the work on a linear project is done incrementally, controls may not all be put in place at the same time, although we agree that controls generally should be in place at the time of, or before, earth disturbance. We suggest this condition be changed to read: "Compliance . . . is required, to the extent practical, upon the beginning of the construction project."

DWWM believes the commenter has interpreted the statement correctly in regards to projects done incrementally. Controls only need to be installed for the section to be disturbed prior to construction activities starting. The commenter was also correct that clearing without land disturbance is allowed. DWWM believes the Condition B is appropriate as written in the draft General Permit.

145. Condition C.1.a states that "permit noncompliance constitutes a violation of the State Act (Chapter 22, Article 11 and Article 12) and is grounds for enforcement action; for permit modification, revocation, and reissuance, suspension or revocation; or denial of a permit renewal application." This permit is issued pursuant to the State Water Pollution Control Act, Chapter 22, Article 11. Article 12 (the GPA) may impose certain conditions in other permits, but it is not itself the basis for issuance of a permit. The two articles impose separate and distinct requirements, and a violation of a permit condition drawn from Article 12 is not a violation of Article 11, and vice versa. The sentence referred to above might better be restated to refer to "(Chapter 22, Article 11 or Article 12)".

DWWM agrees with the suggested change and will change the draft General Permit.

146. Condition C.2 of the permit states that "[i]f 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." We agree that the continued applicability of the permit in the event the general permit is discontinued may be appropriate. However, this storm water permit is not an NPDES permit, and therefore 47 CSR 10, which governs NPDES permitting, is inapplicable to this permit, except as the 47 CSR 10 regulations are expressly incorporated, as provided in 47

CSR 10-3.2.c. We suggest the DEP identify those portions of the NPDES regulations that it is applying to this non-NPDES permit. And as we discuss further below, we suggest that the DEP not apply most portions of the NPDES regulations to this permit, particularly the review periods.

DWWM intends to use the same sections of the NPDES Regulations as it has for all other stormwater General Permits.

147. Condition C.10.d. allows the Director to enter the site “to sample or monitor. . .any substances or parameters. . .” As there is no sampling or monitoring required under this permit, it is not clear what purpose is served by the DEP reserving the right to sample or monitor. If proper BMPs are in place, the operator will be in compliance with its permit.

If proper BMPs are not in place then the turbidity standard would apply. As noted in 47CSR10.3.2.c., “When issuing permits required under the State Act but not required by NPDES, the chief may follow the procedures set forth in this series.” DWWM has chosen to follow this series to issue this State permit. The above language came directly from 47CSR10 and will not be changed.

148. Condition C.11 of the permit establishes the submittal and wait times for modification of coverage under the general permit. As we discuss below in Section H.5 of these comments, we strongly urge the DEP to develop a permit that only requires a notification to the DEP in order for the permit to be effective. If that were done, there would be no need for advance approval, with concomitant deadlines, for permit modifications. Even if the DEP intends to reserve the right to approve certain permit modifications in advance of their implementation, the wait times (45 days advance notice if no public comment is needed; 90 days if public comment is necessary) are too long. An example of the problems posed by lengthy advance notice can be demonstrated by a consideration of pipelines. Pipeline construction commonly involves frequent changes in the direction of pipelines, and hence changes in the permitted area. Pipelines are ordinarily first laid out on maps in the most reasonably direct route between the gas source and its destination. Landmen must then acquire the rights of way to that route, and when those rights aren’t available, the route must be changed. Once construction begins, changes are common. A stream crossing location may be moved, or an unexpected rock outcrop may prevent pipeline construction along the anticipated route. In short, the route of a pipeline may change frequently, and mandating a 45 or 90 day waiting period for each change will greatly interfere with the cost-effective laying of gathering or transmission line. Pipe laying is not similar to construction of a large building, where the site, contour of the land and storm water infrastructure are known from the beginning of the project. Modifications of the permit should require, at most, 10 days notice, without requiring approval of the DEP before the modification can be made.

The majority of the concerns raised above would not require a modification to the permit. However, DWWM urges comprehensive detail sheets be provided with the application. If all the potential stream crossing methods are shown and the proposed locations shown and then a location changes, a letter to DWWM with the new latitude and longitude would suffice. In regards to the pipeline route changing, again if the applicant shows a corridor which can be several miles wide in the original application then the exact route will not matter as long as it is somewhere in the original corridor. DWMM will make every effort to expedited modification reviews but cannot agree to the 10 days notice as requested by this commenter.

149. As explained in Section II.A.6 of these comments, there is a provision in the water quality standards that relieves those operators who are implementing “Best Management Practices in accordance with the State’s adopted 208 Water Quality Management Plan” from complying with

the turbidity criteria. We seek confirmation from the DEP that those complying with this permit qualify for that exemption, as it may determine whether an operator is complying with water quality standards, as required by Condition C.12.

DWWM will enforce this provision the same way for this General Permit as it does for WV/NPDES Permit for Stormwater Associated with Construction Activities.

150. "Permanent detention/retention facility[ies]" should not be required for this permit. First, this permit is authorized to protect water quality standards, not to permanently control the amount of runoff from permitted sites. Second, the construction of linear projects like roads and pipelines, which extend over varied terrain, do not lend themselves to these types of structures, which are more appropriate for more compact projects. This definition, and any requirement in the permit for their installation, should be removed.

DWWM expects that few facilities subject to coverage under the proposed General Permit will have concerns in this regard. For example, a pipeline would not need to address these criteria; however, a large building and paved parking lot or work area would need to. DWWM expects that the applicant's designer can determine and justify appropriate stormwater measures to address concerns specific to the site in question. For example, discharge from 3 acres of impervious surface into a small urban stream may have significantly different impact concerns than a direct discharge of the same area into the Ohio River. DWWM has decided to leave this requirement as written in the draft General Permit.

151. Condition G.3 notes that permittees are not relieved of reporting releases of hazardous substances. There is a separate reporting requirement for releases of hazardous substances from oil and gas operations found at 47 CSR 11, and properly referenced in Section F.1. This Section should refer to 47 CSR 11 instead of 40 C.F.R. 117 and 40 C.F. R. 302.

This is a federal reporting requirement that DWMM has decided to make part of this draft General Permit. Since it is a non-NPDES regulation it is appropriate for the State Discharge Permit.

152. As for the SWPPP, we request confirmation that a generic plan can be developed for multiple sites, where there are common BMPs to be implemented, and individual plans are not necessary. Where, for example, a road is built on a road with a certain grade, or a stream is crossed, the BMPs and construction practices that will be used will not change, and a site-specific SWPP and GPP are not needed.

These types of examples are typically shown in the detail sections of the SWPPP. Many oil and gas companies have developed generic SWPPPS that meet the conditions of the WV/NPDES Permit for Stormwater Associated with Construction Activities. Applicants also attach site maps that show the locations of access road, pipeline locations, stream crossing, lay down area, etc. This would be acceptable for this General Permit also.

153. Condition G.4.b.1 and 2 allows 30 days and 24 hours, respectively, to make changes to sediment and erosion controls that are mandated by the Director or her authorized representative. Does the DEP have unlimited power to order changes? Is there any opportunity to challenge those "notifications", which appear to be orders? We believe the DEP has overstepped its bounds if it intends to require changes without any recourse by the permit applicant or permittee.

G.4.b.1. refers to the application and SWPPP review. If the permit reviewer has technical corrections the applicant has 30 days to respond to the corrections and make the necessary changes. If the applicant does not agree with a technical correction they may explain their

rationale in the correction letter. If the permit reviewer and the applicant cannot come to agreement and the permit is denied then the applicant can appeal that permit decision. G.4.b.2. refers to inspections conducted by the authorized representative and the changes requested to the SWPPP made during those inspections to prevent sediment loss from active construction site.

154. If the permittee is to develop its own SWPPP, why must modifications be done using the DWWM's forms, as required by Condition G.4.c? Furthermore, if the Director's representative can request minor changes to the SWPPP in the field, and those changes are acceptable to the permittee, the changes should not have to go through a modification process. Please confirm that these changes can be made voluntarily at the field level, and do not require formal approval (and consequent wait times) by the DEP.

DWWM has a standard form for modifications it can be found at the following link:

<http://www.dep.wv.gov/WWE/Programs/stormwater/csw/Pages/cswdocs.aspx>

DWWM concurs that a field modification agreed upon between the permittee and the inspector does not need to be submitted as a formal modification. DWWM has developed a modification policy for construction activities and it is available for review upon request.

155. Condition G.4.e.1.A mandates "a proposed timetable for major activities." We would appreciate confirmation that this does not require specific dates, but allows a general timeline for implementation of BMPs, SWPPPs, construction stabilization, and other practices.

We concur that general time lines are acceptable.

156. All roads carrying more than 25 vehicles a day are to be graveled. Condition G.4.e.1.D. We request confirmation that this is evaluated as an average use, not a never-to-be exceeded daily number.

If a road routinely has 25 vehicles a day then it needs to be graveled, if it routinely has less than 25 vehicles a day it will not have to be graveled.

157. It is difficult, if not impossible, to precisely determine "when major grading activities will occur, . . . and when stabilization measures will be initiated" Condition G.4.e.2.A.i. Stabilization should occur when construction ends, permanently or temporarily, and trying to anticipate when that will occur ahead of time is a pointless exercise.

DWWM believes the paragraph as written in the draft General Permit is appropriate. The paragraph has been in the WV/NPDES Permit for Stormwater Associated with Construction Activities for some time with hundreds of projects providing the requested information.

158. WVONGA objects to the requirement that operators put in place controls on post-construction erosion. Operators are required to make certain that their construction activities do not cause water quality violations. They are not required to return the property to better condition than they found it. Condition G.4.e.w.B exceeds the DEP's authority, which is to regulate storm water discharges from construction activity. The DEP is attempting to unlawfully extend its reach to post-construction controls.

Section G.4.e.2.B has been modified. DWWM is requiring that any plans for post-construction controls required by local governments be supplied with the permit application. DWWM expects that few facilities subject to coverage under the proposed

General Permit will have concerns in regard to local government post construction stormwater requirements.

159. Clean water diversions are to be stabilized prior to becoming functional. Stabilization, in the form of vegetative cover, will generally be impossible until it rains, and that precipitation is the reason for the diversion's existence. We suggest changing Condition G.4.e.2.A.i.d to state that "Stabilization of clean water diversions must begin as soon as practicable after construction." In the alternative, "stabilization" could be defined as "placement of material, or planting of vegetation, that retards or prevents erosion."

Clean water diversions must be stabilized prior to becoming functional. This is required because the diversion is carrying upslope water around the site and bypassing any sediment control structures. In the majority of instances these diversions will have to be matted or rocked. DWWM has chosen not to make the suggested change.

160. These construction activities will generally result in unstaffed locations, such as pipelines, and there will be no employees to train. Even if employees are trained during construction, there will be nowhere to leave the records on site for review by the DEP. We suggest deletion of Condition G.4.e.2.C.iv.

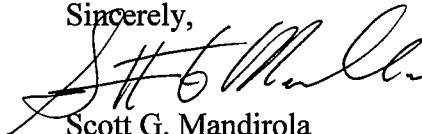
The majority of all construction projects have an office trailer that the records can be kept at. If there is not an office trailer then a box marked "SWPPP and Other Documents" can be located at a staging area. The job foreman can keep them in his truck as long as they are available for review when an inspector is onsite. DWWM has chosen not to make the suggested change.

161. How are permittees to describe "the quality and quantity of stormwater discharges" as required by Condition G.4.e.2.C.vi? They are not required to monitor the discharges using sampling equipment, so are visual reports required? How are such observations to be made over the course of a long road or pipeline, which must have many places that "discharge" storm water? Where are the records to be kept when there is no "onsite" location to store them?

Visual observations are acceptable; these observations can be noted during the required operation and maintenance inspections as outlined in Condition G.4.e.2.D. The majority of all construction projects have an office trailer that the records can be kept at. If there is not an office trailer than a box marked "SWPPP and Other Documents" can be located at a staging area. The job foreman can keep them in his truck as long as they are available for review when an inspector is onsite. DWWM has chosen not to make the suggested change.

The Division of Water and Waste Management will issue Permit Number WV0116815 on May, 13 2013.

Sincerely,



Scott G. Mandirola
Director

SGM/wft

cc: Attached Address List