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west virginia department of environmental protection

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

September 12, 2019

Re: WV NPDES Permit No. WV0111457  
Multi Sector Stormwater General Permit  
Response to Public Comments

Dear Citizen,

The Division of Water and Waste Management (DWWM) would like to take this opportunity to thank those who submitted written and verbal comments on the reissuance of this General Permit. This response to comments highlights the issues and concerns that were identified through the comments received during the public noticing of the draft permit. In many cases, multiple comments were provided on the same issue, therefore we summarized the response to the greatest extent possible.

Comment 1: Petition for hearing - Hearings must be held throughout the state including the Berkeley and Jefferson County area.

Comment 1.a: It is important that adequate notification is provided and that residents have a sufficient time to comment on all permitting actions.

- Local hearings need to be conducted for all permits.
- Local approval from the water advisory committee or the county council must be obtained before any permit registration is issued.

Response 1 and 1.a: A public hearing was held at the WV DEP Office in Charleston, W.V., on May 7, 2019 from 6:00 pm until 8:00 pm. The public comment period was extended for ten days after the hearing and closed on Friday May 17, 2019 at 8:00 pm.

This is a reissuance of the General Permit for storm water discharges from industrial establishments across the State of West Virginia. According to the information we have in our database, we are covering approximately 1200 West Virginia facilities under this General Permit. The Agency sent notification to the public regarding the draft General Permit and the public hearing in accordance with the appropriate 30-day comment period. The Agency updated its website with all appropriate information. As you are aware, this General Permit affects all 55

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counties and businesses across the State. With limited state resources, it would be very hard for the Agency to hold a public hearing in all 55 counties, so instead, the Agency has always held public hearings at the headquarters in Charleston for all their general permits.

Local entities that have authority over building permits, zoning, or operating permits required from potential facility owners or operators may enforce their rules, whereas the General Permit is authorized by state statute and state regulations and it is the authority and responsibility of the DEP to determine whether applications meet the permit's terms and conditions.

Comment 2: This permit must contain requirements to ensure that any applicants have enough capacity to handle increased loads.

Response 2: Wasteload allocations are appropriate for wastewater discharges (including process water). This General Permit authorizes the discharge of stormwater only and benchmark monitoring is used to track the efficiencies of the Best Management Practices employed at the sites. This same approach is used by the US EPA in their Storm Water Multi-Sector General Permit.

Comment 3: Before any registrations are issued for coverage under this General Permit a check of the compliance history of the facility must be conducted.

- Environmental Protection Rules and Regulations must be strictly enforced.
- It must be determined if an applicant is up to date with respect to repairs that have been ordered.

Response 3: This is a process of reissuance. As a permit reviewer we are obligated to review the facility's past performance and make a determination regarding reissuance. Once the registration is issued, Environmental Enforcement personnel visit the facility to check their compliance and take appropriate action.

Comment 4: How does WV DEP ensure that no hazardous wastes are being discharged from any sites or water contaminated by these wastes? For example, from storage pits used to store these hazardous wastes.

Response 4: Hazardous Waste Treatment, Storage or Disposal Facilities are prohibited from obtaining coverage under this General Permit. This registration only deals with stormwater associated with industrial establishments.

Comment 5: I understand the need to help the economy and bring business to WV, but we still need to be vigilant about which companies these are and what the long term affect will be on the state, country, and world. Other parts of the state have suffered from toxic chemicals, and we need to protect ourselves and our children from any more damage.

- Washington County Maryland can be negatively effected by the environmental decisions and lack of governmental oversight by decisions being made outside of the general public that are not in the public's best interest.

- Jefferson County, WV depends on tourism and much of that tourism is in rafting, tubing, kayaking and fishing on the Shenandoah and Potomac Rivers. Our two POTWs empty into Elks Runs, which empties into the Shenandoah, which then joins the Potomac. It is critical

to these businesses to maintain clean water and healthy ecosystems. In addition, there are many drinking water intakes Downstream, which obviously also require clean water.

Response 5: The comment is noted, further the commenter is referred to Response 1.

Comment 6: The benchmark for Iron should be set as 1.5 mg/l.

- An acute criterion for iron must be developed and applied as a benchmark

Response 6: Where applicable, the benchmark for Total Recoverable Iron is set at 1.5 milligrams per liter of water (mg/l).

Comment 7: The Aluminum benchmark should be 750 ug/l dissolved aluminum.

- Benchmarks for other metals should also be set as dissolved.

Response 7: Where applicable, the benchmark for Total Recoverable Aluminum is set at 0.75 mg/l which is equal to 750 micrograms per liter (ug/l). Benchmarks are set as total recoverable to be consistent with the Federal EPA Multi-Sector Stormwater General Permit.

Comment 8: Benchmarks should be amended on a case by case basis using the same mixing zone rules as for process waters if requested by permittees.

Response 8: This Agency concurs with your comment.

Comment 9: The removal of certain non-stormwater discharges from the previous permit is not acceptable. These non-stormwater discharges must be allowed in the reissued permit.

- These non-stormwater discharges must be able to be discharged without being mixed with stormwater before they are discharged.

Response 9: This language was removed from the permit to ensure that only stormwater is an authorized discharge from facilities registering under this General Permit.

Comment 10: The permit cannot protect water quality standards by a condition that requires compliance with water quality standards.

Response 10: See the response to comment number 9.

Comment 11: The permit should acknowledge that the permit complies with antidegradation requirements as long as the BMPs imposed by the Permit and/or the SWPPP and GPP are in place and operating normally.

Response 11: It is the permittee's responsibility to discharge stormwater only under this General Permit. The Code of Federal Regulations 40.131.12 (a)(3) requires industrial facilities discharging to Tier 3 Waters to obtain an individual permit, therefore if applicants anticipate the discharge will be composed of anything other than stormwater, a registration under this General Permit is not appropriate.

Comment 12: The public notice requirement for new facilities is unlawful and should be eliminated.

Response 12: The DEP has determined it is in the best interests of the citizens that new facilities' applications be public noticed. According to Article 1, Chapter 22, Section 1 of the WV Code, the Legislature found that Governmental decisions on matters that relate to the use, enhancement, preservation, protection and conservation of the environment should be made after public participation and public hearings. Public notice is consistent with (b)(9) of the Article. This subsection explains one of the many purposes of establishing the Department of Environmental Protection and that is to increase the accountability of state environmental protection programs to the Governor, the Legislature and the public generally. Public noticing of new a facility's application is consistent with this law. The Director held a public hearing to receive comments on this General Permit and for new facilities applying for registration

Comment 13: There is no reason to require in the Permit the requirement for approval from the DEP for disposal of substances that might settle out in stormwater discharges.

Response 13: The Agency does have an obligation to regulate solid waste, which is regulated under the Solid Waste Management Regulation. This General Permit regulates industrial establishments for their storm water discharges only. Most of the facilities have retention/sediment basins for their storm water holding, which accumulate solids. The Agency would like to notify the permittee to dispose of accumulated solids in a regulatory manner. This requirement is necessary in the general permit.

Comment 14: Under Appendix B, Section II.2 the requirement for submittal of electronic DMRS starting July 1, 2011 should be removed.

Response 14: This reference to the July 1, 2011 electronic submission of DMR's date is incorrect and has been removed from the permit. All application and DMR submittals are required to be completed online using the electronic submission system. (E permitting)

Comment 15: Include requirements for enhanced stormwater management best management practices in areas with sensitive water resources.

Response 15: Facilities covered under this General Permit must follow a groundwater and stormwater protection plan to comply with permit requirements. "Sensitive water resources" were not defined by the commenter, however, if benchmarks are exceeded, the permittee must review the stormwater management plan and upgrade controls, if necessary, to meet the benchmarks. Failure to do so may result in enforcement action and referral for an individual permit.

Comment 16: Include monitoring requirements for stormwater discharges to impaired waters.

Response 16: Benchmark monitoring applies to all facilities, regardless of location.

Comment 17: Update benchmark values for Human Health Criteria.

Response 17: The regulation, 47CSR10, governs this General Permit, and it is written accordingly.

Comment 18: Increase monitoring frequency for parameters with monthly average effluent limits.

Response 18: The monitoring frequency for benchmark parameters is consistent with the federal Multi-Sector Stormwater General Permit.

Comment 19: New or expanded discharges should not be permitted in Tier 3 waters unless the applicant meets the conditions of State Law.

Response 19: Chapter 22, article 11 of the state statute outlines requirements for the permitting of discharges to state waters. This General Permit is consistent with the law.

Comment 20: Add procedures to follow when benchmarks values are exceeded.

Response 20: Procedures are set up in the general permit to address this issue. If benchmark values are exceeded, then the facility must review and revise their stormwater protection plan to correct the exceedance. Facilities that cannot meet benchmarks after the second sampling event must obtain an individual permit.

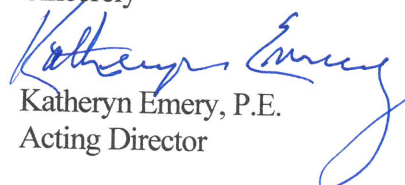
Comment 21: New or expanded discharges should not be permitted in Tier 3 waters unless the applicant meets the Conditions of W.Va. C.S.R. § 60-5-6.5.

Response 21: Per 47 CSR 10, all facilities with new or expanded discharges to Tier 3 waters are prohibited unless the facility meets the public notice requirements. In addition, all permittees must also demonstrate that the Best Management Practices and controls are sufficient to protect receiving waters.

This permit will be issued on September 12, 2019 with an effective date of October 12, 2019. Notice is hereby given of your right to appeal the terms and conditions of this permit registration of which you are aggrieved to the Environmental Quality Board by filing a NOTICE of APPEAL on the form prescribed by such Board, in accordance with the provisions of Section 21, Article 11, Chapter 22 of the Code of West Virginia within thirty (30) days after issuance of this permit registration. Thank you for your interest in this application.

If you have any further questions or concerns, please do not hesitate to contact Larry Board of my staff at 304-926-0499 ext. 1595 or by email at [larry.d.board@wv.gov](mailto:larry.d.board@wv.gov).

Sincerely

  
Kathryn Emery, P.E.  
Acting Director