



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

FACT SHEET

**GENERAL WATER POLLUTION CONTROL PERMIT
STORMWATER ASSOCIATED WITH OIL AND GAS RELATED
CONSTRUCTION ACTIVITIES**

1. NAME AND ADDRESS OF APPLICANT

An applicant is any establishment with discharges composed entirely of stormwater associated with oil and gas field construction activities or operations associated with exploration, production, processing or treatment operations or transmission facilities agreeing to be regulated under the terms of this General Permit (except as noted herein). 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. A common plan of development is a contiguous construction project where multiple separate and distinct construction activities may be taking place at different times on different schedules but under one plan.

2. GENERAL WATER POLLUTION CONTROL PERMIT NO: WV0116815

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

4. PUBLIC COMMENT PERIOD FROM September 3, 2018 **TO** October 21, 2018

5. SIC CODE: 17

6. DESCRIPTION OF APPLICANT'S FACILITY OR ACTIVITY:

Oil and gas field activities or operations associated with exploration, production, processing or treatment operations or transmission facilities.

7. DESCRIPTION OF DISCHARGES:

Earthmoving and grading projects create conditions where accelerated erosion can cause large quantities of soil to be deposited into the streams and rivers of the state. The lack of vegetation, steepening of slopes, increased runoff, decreased infiltration, and other ill effects of construction can cause a 1,000-fold increase in the rate of erosion over pre-existing conditions. The erosion rates on construction sites can run into the hundreds of tons per acre. By volume, sediment is the number one pollutant in the state's waters and degrades more miles of stream than any other pollutant.

8. BACKGROUND

Rapidly expanding extraction of oil and gas from Marcellus shale in West Virginia, largely through horizontal drilling, has increased land disturbances in the State associated with oil and gas activities. Aside from actual well sites, development of oil and gas reserves in Marcellus shale is also requiring construction of additional pipelines and processing facilities in West Virginia. It is expected that this activity will continue to increase in the next several years.

The 1987 Water Quality Act added section 402(1)(2) to the Clean Water Act specifying that the U.S. EPA and States shall not require NPDES permits for uncontaminated stormwater discharges from oil and gas exploration, production, processing or treatment operations or transmission facilities. Section 323 of the Energy Policy Act of 2005 added a new provision to the Clean Water Act defining the term "oil and gas exploration, production, processing or treatment operations or transmission facilities" to mean "all field activities or operations associated with exploration, production, processing, or treatment operations, or transmission facilities, including activities necessary to prepare a site for drilling and for the movement and placement of drilling equipment, whether or not such field activities or operations may be considered to be construction activity". These actions essentially exempt all oil and gas related construction from coverage under NPDES stormwater permits.

The State regulates certain aspects of oil and gas operations as established in Chapter 22, Article 6 of the West Virginia State Code. The Department of Environmental Protection (DEP) Office of Oil and Gas permits well sites and pit wastes discharges, as well as a new certification program for large pit or impoundments (greater than 5,000 barrels). Regulations have expanded under the recently passed House Bill 401 and associated Chapter 22, Article 6A. Natural Gas Horizontal Well Control Act. However, several oil and gas related construction activities remain unregulated, notably pipelines, access roads, and construction of most transmission and processing facilities.

The West Virginia Water Pollution Control Act, Chapter 22, Article 11 establishes that permits are required for discharge of pollutants and 47 C.S.R. 10-3.2.c. provides that State permits not required by NPDES may follow the procedures set forth in 47 C.S.R. 10. The Agency believes that establishing a State General Permit for oil and gas related construction activities benefits both the industry and water resource protection by providing for clear guidance and consistent

application of pollution control measures for these activities, as well as establishing a level "playing field" for the industry.

9.GENERAL

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

10. COVERAGE UNDER THE GENERAL PERMIT

The general permit proposes to provide coverage for any discharges composed entirely of stormwater associated with construction activities of oil and gas field activities or operations associated with exploration, production, processing or treatment operations or transmission facilities be regulated under the terms of the general permit except for:

- A. Operations that result in the disturbance of less than one acre of total land area, which are not part of a larger common plan of development.
- B. Stormwater discharges associated with land disturbing activities that may reasonably be expected to be causing or contributing to a violation of a water quality standard as determined by the Director.
- C. Activities regulated under the Department of Environmental Protection Office of Oil Gas (OOG).
- D. Activities covered under the WV NPDES Stormwater Construction General Permit.

Determination of the disturbed area is made by totaling all disturbed area directly related to construction of the entire project. Offsite waste and borrow sites contiguous to or nearby the construction site or consisting of one or more acres are included in the total disturbance unless borrow sites are covered by other permits.

The Electronic Submission System is used for submitting applications describing the planned project and is used by the Director to review the plans. The public may view the plans at any time by using the Public Query function of the system.

Minor Construction projects are defined as those disturbing one to less than 3 acres of land. Large Construction projects are those that disturb 3 or more acres. Public notice is required for projects discharging to Tier 3 waters, or for land disturbances of 100 or more acres. Also, Public Notice is required for Large Construction projects with a grading phase lasting a year or more.

11. MONITORING REQUIREMENTS

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

12. WHEN TO APPLY

The application for construction activities requiring coverage must be submitted at least 60 days prior to starting the project, except as follows. All projects that discharge to Tier 3 waters, or with 100 or greater acres of disturbance, or Large Construction projects with an initial grading construction phase of one year or greater, must be submitted at least 90 days prior to start of construction in order to allow time for the public notice procedure. Minor Construction projects (disturbing one to less than three acres) not discharging to Tier 3 waters must only apply 20 days prior to initiation of construction. Minor Construction projects that discharge upstream of Tier 3 waters shall submit the application at least 50 days prior to initiating construction.

13. SECTION-BY-SECTION RATIONALE

Section A. Terms of Permit

This section of the permit establishes discharge limitations. Since construction activities are normally short term, monitoring.

Section B. Schedule of Compliance

Compliance with this General Permit the approved Stormwater Pollution Prevention Plan (including the sequence of events) and the Groundwater Protection Plan is required upon the beginning of the construction project.

Section C. Management Conditions

This section is boilerplate language essentially extracted from Title 47, Series 10 of the West Virginia Legislative Rules. A reference to Title 47, Series II, Section 9 of the West Virginia Legislative Rules was included that requires that outlet markers be posted. Outlet markers would be required only during the time of active permit coverage.

Section C.12 classifies receiving waters and requires enhanced BMPS for discharge to all waters not classified as Tier 1, which requires standard BMPs, and to TMDL waters with a waste load allocation specific to stormwater (acreage limitation).

Section D. Operation and Maintenance

This section is boilerplate language essentially extracted from Title 47, Series 10 of the West Virginia Legislative Rules.

Section E. Definitions

Several definitions are included which relate to the stormwater permitting program.

Section F. Reporting

Section F.1. is boilerplate language essentially extracted from Title 47, Series 10 of the West Virginia Legislative Rules. F.2. contains the spill alert phone number and criteria for immediate reporting. F.2.a. addresses emergency reporting conditions.

Section G. Other Requirements

This section encompasses the requirements specific to the stormwater permitting program and those sites subject to regulation under the general permit.

G.1 This paragraph simply depicts the situations for which the Director may require a facility covered by the permit to be covered by a different permit or when such facility may approach the Director on its own initiative to obtain coverage by a different permit.

G.2. This section contains prohibition for non-stormwater discharges and states that an Underground Injection Control Well Permit is required if discharging stormwater into a sinkhole.

G.3 This paragraph details reporting requirements for hazardous substances.

G.4 This section details reporting the requirements of the Stormwater Pollution Prevention Plan (SWPPP) that must be developed for each facility covered by the general permit.

This general permit establishes minimum standards of practices -BMPs- for specific situations rather than specific effluent limitations for stormwater discharges. This means the quality of the discharges must meet a best management practice requirement that represents the minimum level of controls. This general permit allows the meeting of water quality standards with the proper installation of the minimum standards set forth in the general permit and instructions. The application and plans detailing the permittee's schedules and intended BMPs must be submitted for approval. Compliance with the plan must begin immediately as detailed in the SWPPP.

The development and implementation of the SWPPP is one of the most important parts of this permit and is critical to the successful control of stormwater pollution. The SWPPP must be modified as necessary to include additional or modified BMPs designed to correct specific problems identified. These adaptive management requirements are designed to result in permit compliance and prevent stormwater discharges that could cause a violation of state water quality standards. The SWPPP must also be modified whenever there is a change in design, construction,

operation, or maintenance at the construction site that has, or could have, a significant effect on the discharge of pollutants to waters of the state.

Permittees are required to develop a Groundwater Protection Plan (GPP). For construction sites, the areas of concern will be equipment maintenance yards, including fueling and refueling areas, and product storage facilities. GPPs should address groundwater protection and maintenance of pollution controls.

G.4.a. requires applicants to sign applications.

G.4.b. This section details the timeframe an application must be submitted. This section also includes the requirements for the public notice sign.

G.4.c. This section details when the SWPPP must be modified.

G.4.d. This section details general management conditions including preventive maintenance, good housekeeping and spill prevention and response.

G.4.e. This section details what must be included in the site description section, the erosion and sediment control section, the stormwater management control section and other control sections of the SWPPP. This section also details what is required on the site maps.

In accordance with Section C.12. Water Quality, BMPs planned for construction activities discharging upstream of Tier 3 waters will be reviewed to verify if the selection of the control is appropriate as specified in the BMP Manual. For construction activities discharging to Tier 3 waters, Enhanced BMPs are required. No other review for anti-degradation will be conducted, other than those described herein.

G.4.e.2.B. Stormwater management plan section- 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.

Projects located in areas that have local government requirements and/or criteria for post construction stormwater management must meet those requirements and/or criteria.

Permanent stormwater management structures that will impound water shall be designed and certified by a registered professional engineer or professional surveyor.

Other control section- This section requires the solid waste be disposed of properly. Provisions must be made to control dust. This section also details maintenance, inspection, training and record keeping requirements. Record keeping of the quantity and quality of stormwater discharges is accomplished through documentation of the visual observation of stormwater discharges and best management practice installations.

Compliance with other state laws and statutes- This section advises the permittee that nothing in this general permit shall be construed as excusing the permittee from compliance with any applicable federal, state, or local statutes, ordinances, or regulations.

G.5. Discharges to Waters with Approved TMDL's.

Dischargers located in a watershed area where an iron Total Maximum Daily Load (TMDL) has been developed and approved by the U.S. EPA are required to follow the conditions listed in the waste load allocation (acreage limitations), however, for those projects that cannot be completed within the one-year limitation, enhanced BMP's may be used to comply with the applicable waste load allocation.

H. This paragraph serves as a reopener mechanism to go back to a permittee covered under the general permit and places any necessary additional requirements upon the site as necessary, due to reasonable potential or realized water quality impacts by the site stormwater discharges.

I. This section allows for changes in permit conditions in later general permits.

J. This section explains how to properly terminate permit coverage. The steps are: stabilize disturbed areas; verify fees are up-to-date; submit N.O.T. through ESS. If the Director finds unstabilized areas after receiving the N.O.T., permit coverage may continue, however the permittee must stabilize all areas, submit a new N.O.T., and pay fees during this period. Section J gives timeframes for conducting the final inspection and allows the permittee the option of submitting a "stabilization certification" from a professional engineer or professional surveyor that will be honored in lieu of final inspections not conducted within the timeframes.

Appendix A.

This section describes the inspection process and related information

10. SUMMARY OF SIGNIFICANT CHANGES TO THE GENERAL PERMIT

The draft general permit includes several new or modified requirements and thus differ from the 2013 General Permit. The following list summarizes the significant changes to the General Permit:

A. Authorization to Discharge

Item 4. of "To Whom It May Concern" now contains a statement that the authorization to discharge occurs when the Director approves the application for registration under this general permit.

B. Continuing Coverage at time of Reissuance of the General Permit

Item 4. of "To Whom It May Concern" was altered to reflect the fact that the permit is being reissued, so the language relative to a first-time permit is out. Instead, Item 4 explains which sites

automatically continue to have coverage and which have to reapply to continue coverage. Automatic coverage is also known as "rollover".

C. Requested Information

Section C.9. now contains clear language that applicants are required to provide information related to water quality to the Director; previously the item just referred to information the applicant realized was incorrect or missing. The new wording ensures the Director can obtain the necessary information on which to base an approval or denial of permit coverage.

D. Enhanced Best Management Practices

Section C.12 "Water Quality" removes the practice of monitoring stormwater discharges in areas with established Total Maximum Daily Loads (TMDLs). The one-year limitation for the grading phase is still a requirement, when the TMDL waste load allocation specifies this as the condition for stormwater discharges. C.12 introduces enhanced BMPs, which can be used when projects can't be completed with the one-year allowed by the TMDL. The revised permit gives permittees 6 months to comply with new TMDLs.

Enhanced BMPs are required for all discharges except those going to Tier I waters.

DEP's approach to construction general permits, whether for NPDES or Oil and Gas, follows the same path as EPA's construction general permit. Both EPA's and DEP's permits rely on best management practices (BMPs) to control the discharge of sediment or sediment-related parameters. EPA has taken this approach and provides a detailed explanation in their 2017 Construction General Permit (CGP) fact sheet and in the previously issued 2012 CGP fact sheet. Notably, the DEP NPDES Construction General Permit is approved by EPA

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

EPA states in section 3.1 of the 2017 CGP that "EPA expects that compliance with the conditions in this permit will result in stormwater discharges being controlled as necessary to meet applicable water quality standards". In parallel, DEP believes the same rationale applies to a permit, approved by EPA, for use by a state with delegated primacy to implement the NPDES program.

In the simplest of terms, antidegradation involves protecting a stream's designated uses at a Tier 1 level if the stream is impaired for a particular pollutant of concern, keeping high quality streams better than criteria unless a lowering of water quality is justified based on socioeconomic considerations (Tier 2) and providing for only short-term degradation of Outstanding National Resource Waters (Tier 3).

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

The standard stabilization requirements in the EPA approach are to initiate the installation of stabilization measures immediately in any areas of exposed soil where construction activities have permanently ceased or will be temporarily inactive for fourteen (14) or more calendar days and complete the installation of stabilization measures as soon as practicable, but no later than fourteen (14) calendar days after stabilization has been initiated. For a discharge to sensitive waters EPA requires the completion of the installation of stabilization measures as soon as practicable, but no later than seven (7) calendar days after stabilization has been initiated. The rationale for the more stringent requirements for Tier 2 and 3 designated waters as explained in the EPA 2012 CGP fact sheet is as follows: "As stated in Part 3.1 of the [2012] permit, in the absence of information demonstrating otherwise, EPA expects that compliance with the conditions in this permit will result in stormwater discharges being controlled as necessary to meet applicable water quality standards (which include state antidegradation requirements). More specifically, by imposing on operators that discharge to Tier 2, Tier 2.5, or Tier 3 waters the requirement to comply with the additional requirements, on top of the permit's other effluent limits and conditions, to stabilize exposed areas faster and to conduct more site inspections than other sites, it is EPA's judgment that authorizing these discharges will not result in a lowering of water quality. Thus, EPA has determined that compliance with the CGP generally will be sufficient to satisfy Tier 2 and Tier 3 antidegradation requirements because the controls will not result in a lowering of water quality, making individualized Tier 2 or Tier 3 review unnecessary."

The Construction Stormwater General Permit issued by WVDEP requires that stabilization measures shall be initiated as soon as practicable in portions of the site where construction activities have temporarily or permanently ceased, but in no case more than seven days after the construction activity in that portion of the site has permanently ceased. It also requires at a minimum all erosion controls on the site are inspected at least once every seven calendar days and within 24 hours after any storm event of greater than 0.5 inches of rain per twenty-four-hour period. These standard requirements are more stringent than the standard requirements for the EPA permit and nearly as stringent and protective as the EPA permit requirements to address discharges to

waters impaired for sediment or sediment-related parameters, and/or nutrients, or to waters that are identified by the state, as Tier 2, or Tier 3 for antidegradation purposes. The Stormwater Pollution Prevention Plan (SWPPP) for projects requires that additional protective measures will be employed at crossings of and in proximity to Tier 3 and trout streams. The additional measures include permanent seeding and mulching must be accomplished within four (4) days of reaching final grade; temporary seeding and mulching must be accomplished within four days when areas will not be disturbed for more than fourteen days; the use of reinforced filtration devices (defined as belted silt retention fence, triple stacked compost filter sock and/or super silt fence) at all downslope perimeters; stream crossings in these areas will be completed within seventy-two hours once the crossing has begun; and disturbance will be limited as much as practicable. Additionally, the SWPPP requires at a minimum all erosion controls in these areas are inspected at least once every seven calendar days and within twenty-four hours after any storm event of greater than 0.25 inches of rain per twenty-four-hour period.

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

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

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

With respect to waters with Total Maximum Daily Loads (TMDLs) or 303(d) listings for sediment, when TMDLs are developed a waste load allocation for some amount of new construction stormwater acreage is included in the TMDL. TMDLs only directly dictate what happens to

activities on the land that have a discharge permit. Activities like farming or logging may disrupt the soil, but are not regulated or given effluent limits. They are considered nonpoint sources in the TMDLs and thus not given a waste load allocation.

In waters with approved TMDLs for sediment, applicants will be required to operate within the acreage limitations and/or disturbance alternatives as specified in the TMDL. In waters listed as sediment impaired, where TMDLs have not yet been developed, as per the SWPP commitments, applicants will utilize controls as described above in the EPA methodology for sensitive waters.

E. Reliance on BMP Manual Authorized

The manual contains details of sediment and erosion control methods and devices that the Director considers appropriate for filtering stormwater before discharge. Section C. 15 is new and its purpose is to formalize the Director's reliance on the manual.

F. Definitions Manual

The title of Section E. Monitoring and Reporting changed due to the deletion of the sentence that states monitoring isn't required unless the Director would direct. Monitoring for construction site runoff is not an effective tool, as established in C.12. Also, Section E. contained nothing about reports. The title was changed to Definitions and the section itself upgraded with more definitions and in some cases, definitions that are clearer.

F. Prohibitions

Section G.2 Prohibition of Non-Stormwater Discharges was modified to include specific types of prohibited discharges, such as those containing oil or solvents, to help permittees understand the intent of the section and prepare better SWPPPs.

H. GPPs

Reliance on groundwater as a source of drinking water is more prevalent in areas that have seen little development. Due to construction of pipelines and other facilities in such protection of underground sources of drinking water is explained in the GPP, so the permit now requires these plans to be reviewed.

J. When to Apply

Section G.4.b. and its subsections contain application schedules. Minor Construction project applications should be submitted 20 days before construction is planned. The previous permit gave 10 days for regular projects, that was a first-term permit and the workload for processing Minor Construction applications was unknown. Also, review of discharges to TMDLs and other classified waters was not thorough enough to adequately protect waters of the state. The reissued permit requires more details about the nature of the activity to be reviewed. The DWWM has just one reviewer, therefore 20 days is a reasonable time frame.

Minor Construction Projects that must go through the public notice process, that is Tier 3 sites, must submit applications 50 days in advance of the planned start date.

Large Construction Projects (3 acres and greater) that do not require public noticing must submit 60 days in advance and those that must go through the public notice process must submit 90 days before the anticipated construction date. Previously, the DWWM had 45 days to review these projects but there are only 2 full time reviewers. Around 1200 permits were processed over the permit term and some of the projects involve pipelines hundreds of miles long. The increase to 60 days is necessary and reasonable.

K. Posting a Sign or Notice

Applicants are required to post a sign or notice so the public knows about a potential construction project. Previously, applicants had just 24 hours to get signs posted. In Section G.4.b.5., the reissued permit gives 72 hours to do so. Applicants told the DWWM that it was almost impossible to comply with the 24-hour deadline. Ordering a sign, taking delivery, and getting it to the site and posted takes longer than the permit provided. The change was necessary to provide a reasonable time period, rather than forcing applicants into violation status.

The same section contains the requirements for the content of the sign or notice. The content was modified due to the fact that the public can access applications online. Now the signs have to provide notice of the website for viewing the application and where to send comments to the Director.

L. Nature of the Activity

The reissued permit provides greater protection for water quality by having applicants provide more detail about their plans for preventing erosion and controlling sediment. G.4.e.1.B., G.4.e.1.B.2. are sections that obtain better descriptions of the planned activities.

M. Offsite Waste and Borrow Sites

Construction of linear projects and sometimes other similar projects result in excess material (dirt/rocks) that needs a disposal location. Also, fill material is sometimes needed. Permitting of these sites is routine unless the locations of the sites are non-contiguous to the primary construction site. Contractors reported being on a site, having local residents ask for a couple pickup loads of fill dirt, or needing small amounts of rock. Hiring a truck to go to a quarry vs. getting the rock for no cost from a local resident drove up the cost. Considering that some of the sites are less than an acre in size, and factoring in the intent of the concept of Larger Common Plan of Development or Sale, the DWWM reviewed the NPDES Permits for nearby states as well as the EPA's construction permit and learned that very small, non-contiguous sites are not permitted. This reissued permit uses the same regulatory approach and requires that sediment be controlled but that permitting is required only for contiguous sites or for those of at least an acre in size.

N. Maps

The previous permit did not spell out exactly what information should be put on the map so G.4.e.a.C. and G.4.e.a.C.3. now list the required contents of the map. G.4.e.l.C.l. allows maps for non-linear projects to depict 10-foot contours as it's expensive to survey or obtain aerial mapping for 5-foot contours which is used for most of the mapping purposes, but, 10-foot contour maps are not allowed for projects located in areas with slope steepness of 3H:1V.

A Soils Report with map showing the proposed Limits of Disturbance and soil mapping units along with a table describing each unit is required since certain soils are more erosive than others. The applicant should use soils map when selecting sediment controls and the Director will review to verify the controls are appropriate for the type of soils, as depicted on the map.

Previously, maps provided limited information, but the draft permit asks for shapefiles. Reviewers are expected to determine if proposed projects will drain to Tier 3 or TMDL waters or will be affected by Larger Common Plan of Development or Sale, but for pipeline projects that cross hills (and therefore cross watershed boundaries) it can be extremely difficult to perform a comprehensive review. Also, the public asks for information about portions of pipelines in specific areas of concern. Shapefiles are tools that will allow a thorough review and all portions of a proposed pipeline can be drawn on a map that's useful to professionals as well as the public.

O. Roads

DWWM staff learned that road construction can be a major source of eroded sediment, so the reissued permit contains a major revision in G.4.e.l.D.l. which is intended to prevent soils from being washed offsite.

P. Cross Sections and Profiles

The reissued permit recognizes that preventing erosion on steep slopes is difficult, so applicants are asked to provide cross sections and/or profiles to better illustrate how their proposed controls are meant to work.

Q. Vegetative Practices

Along with other controls, natural vegetated buffers provide protection against erosion and G.4.e.2.A.i. has been expanded to explain when buffers are not required.

R. Preventing Hillside Slips

G.4.e.2.A.i.b. contains the timeframes for stabilizing disturbed areas and has been expanded to include a sentence that is intended to prevent delays for stabilizing slips. Section C.11.a. explains that work may be done prior to obtaining permit coverage during emergencies and the wording is added to make sure no confusion remains between the two sections.

S. Structural Practices

Over the previous permit term, there has been confusion about substituting sediment and erosion controls for those that were in the approved application. Substitutions may or may not provide equivalent protection for state waters, but the revised permit intends to cut down on uncertainty by having professionals certify the substituted controls meet the functional capability of the controls that were originally approved. This is laid out in G.4.e.2.A.ii. The next subsection, G.4.2.A.ii.a. addresses the spillway design for sediment traps, which was inadvertently left out of the previous permit.

T. Hay Bales

Though the previous permit stated that hay or straw bales are not acceptable BMPs, applicants continued asking to use them. G.4.e.2.A.ii.k. was revised to place more emphasis on the prohibition and now says bales are not acceptable for primary or secondary filtering devices. The language intends to discourage the practice.

U. Anti-degradation- Tier 3 Waters

Section C.12. Water Quality was revised to require Enhanced BMPs for projects discharging to Tier 3 waters and G.4.e.2.A.iii. reinforces the fact that applications for coverage under this general permit will not be subjected to any other anti-degradation review, once the review verifies that enhanced BMPs are chosen for use at the site.

V. Stormwater Management Plan Design and Certification

G.4.e.2.B. was modified to include professional surveyors as those persons who are to design and certify permanent structures. This group of professionals are deemed qualified to conduct this work by the permit.

W. Record-keeping

The previous permit did not tell permittees how long to maintain records or what type of records to keep. G.4.e.2.C.vi. now explains which records to keep and how long (3 years from termination).

X. Maintenance

G.4.e.2.D. now includes the installation and maintenance of a rain gauge. Inspections are based on certain timeframes and on rain events of certain amounts. A rain gauge helps the Qualified Person responsible for inspections verify when to inspect after rain events.

Y. Discharges to Impaired and TMDL Waters

Revised language to require enhanced BMPs for projects discharging to impaired waters.

Z. Terminating Permit Coverage

Section J. of the revised permit has changed significantly. Once disturbed areas are stabilized, most permittees want to terminate permit coverage but due to the heavy workload of the DWWM field inspectors, it can sometimes take a while to perform the final inspections. The revised permit now contains a timeline for conducting final inspections. The permittee may submit a certification from a professional engineer or surveyor, which will be accepted for termination in lieu of final inspections when the timeframe is not met by DWWM staff.

This section ends the practice of prorating annual permit fees. In practical terms, prorating means that DWWM's accounting staff create an annual permit fee invoice for a portion of a year, based on the date the permittee asserted the site was stable. The practice was put in place because the DWWM's field staff was very small and their ability to perform final inspections sometimes took a while. Prorating was seen as a fair way of doing business, that is not charging the permittee for invoices issued after the Notice of Termination was sent in.

Now that Section J. contains time limits for final inspections, prorating is no longer needed. In reality, prorating created its own burdensome workload. With just one accounting technician to perform the routine work of invoicing and posting payments DWWM, prorating was backlogged.

Appendix A.

This is a new addition to permit and it describes inspections and inspection requirements. It was added to provide permittees with a thorough explanation of how to conduct proper inspections, when to inspect, and the record-keeping requirements for inspections.

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

During the public comment period, any interested person may submit written comments on the draft permit. Comment shall be made in writing and addressed to:

DEP.Comments@wv.gov or
Director, Division of Water and Waste Management, DEP
601 57th Street SE Charleston, WV 25304-2345
Attention: Jon Michael Bosley
E-mail: Jon.M.Bosley@wv.gov

The Director shall hold a public hearing whenever he or she finds, on the basis of requests, a significant degree of public interest on issues relevant to the draft permit. Any person may submit oral or written statements and data concerning the draft permit; however, reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be

required. A tape recording or written transcript of the hearing shall be made available to the public upon request.

If information received during the public comment period appears to raise substantial new questions, the Director may reopen the public comment period.

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

Hearing impaired individuals having access to a Telecommunication Device for the Deaf (TDD) may contact our agency by calling (304) 926-0489. Calls must be made between 8 a.m. to 3:30p.m. Monday through Friday. Requests for additional information should be directed to Jon Michael Bosley at (304) 926-0499, Extension 1059.