



west virginia department of environmental protection

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Harold D. Ward, Cabinet Secretary
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February 5, 2025

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 issuance of this General Permit. The response to comments highlights the issues and concerns that were identified through the comments received during the public noticing of the draft General Permit. Public comments are shown in italics with the **agency responses below in bold.**

Multi-Sector Stormwater General Permit WV0111457 Reissuance

Comment 1: The Fact Sheet at p. 1 states that all permittees with current registrations are to “submit a new registration form to obtain coverage under the [MSGP].” There is no date specified by which the forms must be submitted, although later in the Fact Sheet there is a reference to the reapplication provisions on page 45 (presumably this should be page 48) of the MSGP. Condition 1.2 requires reapplication within 30 days of expiration of the permit. However, since the permit has no effect after it expires, this 30 day application period can never be enforced.

To further confuse the matter, the MSGP states that registrations approved within 6 months of the effective date of the MSGP can retain coverage, if they have had no changes and agree to coverage under the new MSGP. MSGP at 2. Registrations issued more than 6 months before the effective date have to submit a complete renewal application within 6 months of the effective date in order to maintain coverage. MSGP at 3. This is a more reasonable approach, and we would ask that the DEP please amend the MSGP and the Fact Sheet to allow 180 days for coverage re-applications to be filed. In addition, we urge the DEP to provide notice to all current MSGP registrants, using email contacts in its system, to advise them of the need for the recertification, and the need to re-apply for low concentration waivers in accordance with condition B.4 of the MSGP. This would doubtless improve compliance, and would be a reasonable step for the DEP to take.

Response 1: Permittees have 30 days from the issuance of the 2024 Multi Sector Stormwater General Permit to reapply. The current general permit may be extended if necessary to ensure that currently registered sites may maintain permit coverage. The language on Page 3 is incorrect and will be changed to say must submit a complete renewal application within one month of the effective date. Facilities covered under an individual permit must submit their renewal application at least 180 days prior to permit expiration. Since facilities covered under the MSGP are registered under this general permit a 30 day reapplication period is appropriate. The new permit will be posted on the WVDEP website when it is approved.

Comment 2. We suggest that the MSGP contain an affirmative statement that discharges to NPDES-permitted facilities, such as municipal separate storm sewer systems or publicly-owned treatment works, are not covered by this permit, and those facilities that discharge all their stormwater into such systems do not need coverage under the MSGP. Discharges that are not to waters of the state or waters of the United States need not have federal or state permits, although they can be subject to terms and conditions of the permit of the treatment facilities into which they discharge.

Response 2. Facilities discharging stormwater from the POTW or MS4 utilities have their own permit coverage to discharge stormwater into the Waters of the State. They do not have additional coverage from MSGP. However, as commenter mentioned, some facilities are proposing to discharge into a POTW or MS4. In that instance, the Agency requires dischargers to monitor their discharge prior to entering POTW or MS4 conveyance. Dischargers are only using a POTW or MS4 conveyance to route their discharge into waters of the State.

Comment 3. Condition B.6.a.7 refers to “non-compliance with a permit condition.” We seek confirmation that exceeding a benchmark is not, in and of itself, a noncompliance with a permit condition, since benchmarks are not permit limits.

Response 3. Agency agrees with your interpretation that exceeding the benchmark is not a permit violation. However, exceeding a benchmark triggers review of the Stormwater Pollution Prevention Plan to achieve attainment of benchmark levels. In this instance not revising SWPPP is a non-compliance of the permit.

Comment 4. Condition B.12 requires all permittees to comply with the antidegradation provisions of 60 CSR Antidegradation should apply to new permittees, not existing permittees. The Fact Sheet recognizes this, stating that “Currently there are approximately 1,000 facilities registered under the 2019 [MSGP]. These facilities have existing discharges and therefore are not subject to antidegradation requirements.” The MSGP should note that antidegradation analysis is only required for new permittees, and further explain how it intends to confirm that a stormwater discharge meets antidegradation requirements.

The Fact Sheet states that all new registrations have to undergo public notice because of antidegradation analysis. That public notice requirement is not found in the MSGP, and therefore presumably does not apply to existing facilities. Even for new facilities, the public notice requirement is not countenanced by the DEP’s own regulations. Public notice should be given of permit issuance, not individual registrations. The MSGP is subject to public comment, as it should be. Registrations under the MSGP should not be.

Response 4. According to 60 CSR 5 “Applicability 1.5.a. Except as noted, the antidegradation implementation procedures herein apply to regulated activities that have the potential to affect

water quality. The level of review required will depend upon the existing uses of the water segment that would be affected, the level of protection (“tier”) assigned to the applicable segment, the nature of the activity, and the extent to which existing water quality would be degraded.” All the facilities existing and new are required to go through the Antidegradation Tier 2 review process. According to 60 CSR Series 5 Section 8.4 full Tier 2 review for the proposed facility requires public notice procedure.

Comment 5. Condition B. 13 does not allow coverage under the MSGP for facilities discharging pollutants of concern to waters for which a total maximum daily load has been developed. An individual NPDES permit is required instead. That is an unreasonable requirement, as a stormwater discharge may contribute insignificant amounts of pollutants of concern. It would make far more sense for the DEP to flag registrations that would affect a stream for which a TMDL has been done and decide, on a case-by-case basis, whether an individual permit is needed.

Response 5. The objective of a TMDL is to determine the loading capacity of the waterbody and to allocate that load among different pollutant sources so that the appropriate control actions can be taken, and water quality standards achieved. All contributing sources of the pollutants (point and nonpoint sources) are identified, and they are allocated a portion of the allowable load that usually contemplates a reduction in their pollution discharge in order to help solve the problem. The MSGP proposes benchmark values for the pollutant, and does not impose effluent limitations. However, failure to consistently meet the benchmark values may lead to the imposition of effluent limitations, which would require coverage under an Individual NPDES permit.

Comment 6. It is unclear what is intended by these sentences in Condition B. 14: “If a site discharges to a stream where a federally-endangered or threatened species or its habitat are present, the applicant should contact the US Fish and Wildlife Service for a determination that requirements of the Federal Endangered Species Act are met.” What exactly are the registrants to confirm with the USFWS? What sort of “determination” is required? As written, this is too vague to be enforceable.

Response 6. This is noted as a courtesy for permittees. WV DEP does not enforce this provision and will not hold up registrations if a permittee fails to contact the USFWS.

Comment 7. Generally the MSGP does a good job of differentiating between registrations to obtain coverage under the MSGP, and the MSGP itself, but there are places where improvements would be welcome. For example, both the registration and the MSGP can be modified, but only modification of the MSGP triggers the procedures of modification under 47 CSR 10. Consequently, in places such as Condition B.15 the fact that a registration is being modified is no reason to require public notice and comment.

Response 7. Public Notice is only required for a GP Registration if a modification significantly alters discharge characteristics of the site such as adding a new outlet or other major changes in operations at the site. Modifications such as these, must be put out to public notice to comply with antidegradation requirements.

Comment 8. Condition B. 18 exceeds the authority of the DEP. A permittee should be able to eliminate discharges to waters of the state and waters of the US and then terminate the MSGP without getting approval from the DEP. The DEP has no authority to continue to insist on imposing restrictions on a facility that is not discharging, and such a facility has no obligation to “remove all potential

contaminant sources from the site.” If a facility wants to go to zero discharge, or chooses to discharge to a POTW, it is not for the DEP to determine whether they have to continue to operate under the MSGP. The DEP can enforce for unlawful discharges if a site terminates MSGP coverage but continues to discharge, but that is not the same as deciding whether a facility can terminate coverage.

Response 8. Permittees could eliminate discharges from their own site into waters of state. However, according to 47-10-9 they are required to request the revocation of the permit coverage, and it is the Director’s duty to evaluate the request and make an appropriate decision. 47 CSR 10 Section 2.30. “National Pollutant Discharge Elimination System” (“NPDES”) means the national program for issuing, denying, modifying, revoking and reissuing, suspending, revoking, monitoring, and enforcing permits and imposing and enforcing pretreatment requirements under §§307, 318, 402, and 405 of the CWA, including any approved State program.” Facilities are required to remove all potential contaminant sources from the site in order to avoid the potential pollutant discharge into the water of the State.

§22-11-8. Prohibitions: permit required.

(3) Acquire, construct, install, modify a disposal system or part thereof for the direct or indirect discharge or deposit of treated or untreated sewage, industrial wastes or other wastes, or the effluent therefrom, into the waters of this state, or any extension to or addition to the disposal system.

WVDEP cannot assume that a site may terminate MSGP coverage without notice that the site meets one of the above criteria. DEP only requires that a letter be submitted requesting MSGP Permit registration termination. A site visit by WVDEP is then required to confirm that the site does indeed meet the requirements for permit registration termination.

Comment 9. The permit is accompanied by the boilerplate provisions that are always attached to individual NPDES permits, which causes a raft of problems because many of the conditions simply aren’t relevant, which calls into question how they should be applied and enforced in the MSGP. For example, Condition I.1.b. requires compliance with all toxic pollutant effluent standards or prohibitions established under Section 307(a) of the Clean Water Act. How is that to be applied? Rather than explain it, and many other similar provisions, we request that the DEP go through the boilerplate conditions and remove or rewrite those that aren’t applicable.

Response 9. This permit is no more stringent than the Federal Multi-Sector Stormwater General Permit. Therefore the boilerplate language will not be changed.

Comment 10. Condition I.10 states that effluents are not to be of such quality as to cause a violation of water quality standards. This is unnecessary, since there is already a provision, Condition B. 11, that expressly lists the narrative water quality criteria that apply to permittees. Furthermore, a condition very much like Condition I.10 is likely going to be found unlawful by the US Supreme Court in an appeal from the Ninth Circuit by the City of San Francisco. It should be removed.

Response 10. Condition I.10 references inspection and entry to industrial sites. This condition has nothing to do with effluents or water quality standards.

Comment 11. Removed substances (Condition II.5) should be expressly allowed to be disposed anywhere in the state of West Virginia that they are lawfully accepted by a landfill. There should be no need for a separate approval by the DEP that has to be requested by the permittee.

Response 11. According to 47 CSR10 Section 5.15. Removed substances. Where removed substances are not otherwise covered by the terms and conditions of this permit or another existing permit issued by the Director, any solids, sludges, filter backwash or other pollutants removed in the course of treatment or control of wastewaters that are intended for disposal within the State shall be disposed of only in a manner and at a site subject to the approval by the Director. If such substances are intended for disposal outside the State or for reuse (i.e. as a material used for making another product, which in turn has another use), the permittee shall notify the Director in writing of the proposed disposal or use of such substances, the identify of the prospective disposer or users, and the intended place of disposal or use, as appropriate. No change has been made.

Comment 12. The definitions in III.7 should be reviewed, and unused terms removed. There are many terms, like “average monthly discharge limitation” and “daily average temperature” and “non-contact cooling water” that have no relevance to the MSGP.

Response 12. Some of the definitions in this section are not relevant to the Multi Sector Stormwater General Permit. Therefore the following definitions will be removed B, D, F, G, H, I, J, K And L.

Comment 13. Request for public hearing

Response 13: 47CSR 10 Section 12.3.a. states that The Director shall hold a public hearing wherever he or she finds, on the basis of requests, a significant degree of public interest on issues relevant to the draft permit(s). According to 47 CSR 10 - 12.3.a. “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(s). The Director also may hold a public hearing at his or her discretion whenever, for instance, such a hearing might clarify one (1) or more issues involved in the permit decision.” The Director determined that the public hearing is not necessary, however, the Director met with two commenters to hear their concerns and comments which were not outlined in their request for public hearing.

Comment 14. Page 3 there appears to be a heading, sentence, or something missing. There is a gap and then just a sentence fragment starting “Is hereby ...

Response 14: After review of this section there appears to be nothing missing on page 3. However the sentence “Is hereby granted coverage under the General WV/NPDES Water Pollution Control Permit to allow stormwater discharges to waters of the state.” is repeated from page 1 so this sentence on page 3 will be deleted.

Comment 15: For Monitoring Requirements for SIC 3296

o Add monitoring for Lead, Zinc, Iron, and Copper

Response 15: The sampling parameters associated with the SIC code are consistent with the Federal Multi Sector General Permit.

Comment 16: Page 31 2. The following should be removed
o A and J (Allowable Non Stormwater Discharges)

Response 16: Response 4: These are allowable under the federal Multi Sector Stormwater General Permit section 1.2.2.1 and therefore have been included in this Multi Sector General Permit.

Comment 17: B should be modified or removed (Allowable Non Stormwater Discharges)

Response 17: See the response to comment 16.

Comment 18: Page 32 4. Low Concentration Waiver – this should only be after several years of operation. This does not account for ramp up in operation. The measurements should have to be below a certain percentage for each analyte for which an entity wants a waiver. There should be at least two samples below this level required for an extension.

Response 18: The Federal Multi Sector Stormwater General Permit, under Section 4.2.2.3 states: Year one of permit coverage: You must conduct benchmark monitoring for all parameters applicable to your subsector(s) for four quarters in your first year of permit coverage, beginning in your first full quarter of permit coverage, no earlier than May 30, 2021. i. If the annual average for a parameter does not exceed the benchmark threshold, you can discontinue benchmark monitoring for that parameter for the next two years (i.e., eight quarters). Low Concentration Waivers, as provided in Section B.4. of the state permit is similar the the federal criteria, however the state requires permittee to apply to suspend monitoring and are also required to submit an annual certification that there has not been a significant change in the industrial activity or the pollution prevention measures in the area of a facility that drains to the outlet for which the sampling was waived.

Comment 19: . Page 33 5. Natural Background Pollutant Levels: It states that the permittee documents The DEP should make a determination after reviewing the materials submitted by the permittee. This should be more clearly indicated.

Response 19. As outlined in Section B.5. of the permit, if the permittee is claiming a benchmark exceedance is solely attributed to Natural Background Pollutant Levels, then the supporting rationale and collected data for the claim is to be submitted with the final benchmark monitoring report.

Once the claim is received, the agency will make a determination on the validity of the request.

Comment 20. Page 33 6. It should be 2 consecutive exceedances instead of 4.

Response 20: This requirement is consistent with the Federal Multi Sector Stormwater General Permit in section 4.2 monitoring requirements. If the values are such that the average indicates noncompliance, action must be taken.

Comment 21: Page 34 and 35 6.a.3. Corrective Action Documentation. 6.a.3.i. – Permittees should be required to submit notification of the conditions listed in 6.a.1. and 6.a.2., of any failure to take corrective action within the 14 days and why that was necessary, and the permittee should notify DEP of what was done. If DEP finds the actions are not sufficient or different action needs to be taken the DEP should have the authority to require such changes.

Response 21: The agency routinely conducts inspections at permitted facilities. If the referenced corrective actions are not sufficient, the agency may initiate an appropriate enforcement action.

Comment 22: The documentation required in 6.a.3.ii and 6.a.3.iii. should be submitted to the DEP within 7 days of completion.

Response 22: The 14 day timeframe is consistent with the Federal Multi Sector Stormwater General Permit.

Comment 23: Page 35 6.a.4. should be 2 exceedances not 4

Response 23: See the response to comment 20.

Comment 24: Page 36 6.a.5. In addition to further exceedances, an individual permit should be required if permanent corrective action has not been taken within 90 days. For example, discharge cannot simply be diverted away from a discharge point so to avoid having to sample. If permanent corrective action is not able to be taken within the 90 days following the triggering event then an individual permit must be applied for.

Response 24: The current language is consistent with the same language in the Federal Multi Sector Stormwater General Permit.

Comment 25: Page 36 6.a.6. DEP not the permittee should make the determination on all three points listed here.

- *a benchmark exceedance does not trigger a corrective action if the permittee determines that the exceedance is solely attributable to natural background sources or,*
- *if the permittee makes a finding that no further pollutant reductions are technologically available and economically practicable and achievable in light of best industry practice or,*
- *when run-on to the facility causes a benchmark exceedance.*

Response 25: In accordance with the last paragraph of Section 6.a.6., the permittee is required to notify the Director within 5 calendar days of determining any of the above conditions are responsible for or contributing to benchmark exceedances. Once the permittee submits the claim, the agency will make the appropriate determination.

Comment 26: Page 38 9. Representative Discharge – this should only be allowed after two or more reports have shown the monitoring data to be the same or substantially similar.

Response 26: Eight baseline sampling events are required for all new outlets before representative outlets may be approved.

Comment 27: Page 38 10. Visual Examination of Stormwater Quality – Reports should be filed quarterly with the WVDEP with discharge monitoring reports.

Response 27: These reports must be kept on site at all times and available for review by DEP at any time. These reports are reviewed during routine inspections conducted by agency inspection staff. Agency inspection reports are available for public review on the agency’s Application Extender system.

Comment 28: Page 39 14. Endangered and Threatened Species Requirements – This should be a recurring requirement every 5 years.

Response 28: This is not a DEP requirement, it is provided as a courtesy for permitted sites so they are aware they are subject to the endangered species act.

Comment 29: Page 40 17. Paragraph 1 members of the public should have access to the SWPPP at the time of request when made in person and within 24 hours when made via correspondence.

Response 29: The public has access at all times to all permit documents including SWPPP’s by the WV DEPS online application extender system. The public also has access through the electronic submission system public query portal.

Comment 30: Page 40 17. Paragraph 4 there should be a requirement that states, if the permittee wants to claim any portion of the SWPPP confidential, they must have done so prior to the request to view by a member of the public.

Response 30: Confidential business information is not available to the public for review as long as the claim is made in accordance with 47 CSR 12.7.a.

Comment 31: Page 42 2. Facilities in Karst shall follow the design guidelines in the 19 CSN TECHNICAL BULLETIN No. 1 STORMWATER DESIGN GUIDELINES FOR KARST TERRAIN IN THE CHESAPEAKE BAY WATERSHED VERSION 2.0

Response 31: This referenced bulletin is a guidance document. The agency reviews all SWPPPs and GPPs for appropriateness relating to the terrain where a discharge is proposed, including discharges to karst areas.

Comment 32: Page 43 paragraph 1. “Dust or particulate generating processes” Including those covered under any Air permit, and add any pollutants from air emissions that modeling shows will fall out of the air within the perimeter of the facility.

Response 32: Airborne pollutants are covered by permits from the Division of Air Quality.

Comment 33: Page 43 5 “available to all personnel” should state And all personnel shall have annual training on spill prevention and clean up and it should be documented in the SWPPP.

Response 33: The “Employee Training Section” on Page 42, Section A.2.7. lists requirements for training. All environmental training must be documented, kept on site, and available for review by DEP.

Comment 34: Page 43 7. All new employees must have such training within 1 month of commencement of performing duties in affected areas of the facility. Training should be documented and documentation should be submitted to the DEP.

Response 34: See the response to comment 33.

Comment 35: Page 45 6. There should be automatic fines that are assessed if the permittee:

- o - does not perform maintenance included in its SWPPP.*
- o - does not produce a SWPPP when requested*
- o - does not have a SWPPP up to date*

Response to comment 35: The agency routinely conducts inspections of all permitted facilities. If a violation is observed and documented, the inspection staff will initiate an enforcement action if appropriate.

Comment 36: Page 45 GPP

o Facilities in Karst shall follow the design guidelines in the 19 CSN TECHNICAL BULLETIN No. 1 STORMWATER DESIGN GUIDELINES FOR KARST TERRAIN IN THE CHESAPEAKE BAY WATERSHED VERSION 2.0

Response 36: See the response to comment 31

Comment 37: Duty to Provide Information – add time limits

Response 37: This requirement is found in section I.8. Duty to provide information. The permittee shall furnish to the Director, within a reasonable specified time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, suspending, or revoking this permit, or to determine compliance with this permit. The permittee shall also furnish to the Director, upon request, copies of records required to be kept by this permit. Information cannot be provided by a blanket time frame. The time frame must be determined on a case by case basis.

After careful review of all comments, the Division will issue this General Permit on February 5, 2025. Notice is hereby given of your right to appeal the terms and conditions of the permit 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 General Permit.

Response to Comments
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Thank you for your interest and comments on the Multi-Sector Stormwater General Permit. If you have any further questions or concerns, please do not hesitate to contact Patrick Burch of my staff at 304-926-0499 ext. 43813 or by email at patrick.d.burch@wv.gov.

Sincerely,

Jeremy Bandy
Director

JWB/rda

Enclosure