



west virginia department of environmental protection

Division of Water and Waste Management
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Harold D. Ward, Cabinet Secretary
dep.wv.gov

July 7, 2025

Re: WV Permit No. WV0116815
Response to Public Comments

Dear Citizen,

The State of West Virginia, Department of Environmental Protection, Division of Water and Waste Management is proposing to reissue the General West Virginia Permit for Stormwater Associated with Oil and Gas Related Construction Activities Permit No. WV0116815. It is proposed that this General Permit be issued for a five (5) year term.

DWWM published a Class 1 legal advertisement in 53 state newspapers announcing the desire to issue the general permit. The public notice announced a 30 day comment period for the draft general permit. This advertisement was published starting April 10, 2025 and closed May 10, 2025 and allowed the DWWM to receive public comments on the proposed permit. Over the comment period, written comments were received from several commenters. All comments submitted by this time have been added to the official record for the Draft General Permit and considered by the agency.

The Director of the Division of Water and Waste Management retains authority to require any owner/operator to apply for and obtain an individual WV/NPDES Permit. This authority will be exercised when the Director determines that such an individual permit will better protect the receiving water.

Every attempt has been made to ensure that all issues and concerns relevant to the 2025 WV General Permit for Stormwater Associated with Oil and Gas Related Construction Activities, Permit No. WV0116815 have been addressed. DWWM has reviewed and considered all comments received and has prepared a Response to Public Comments.

After careful consideration of all comments, General Permit WV0116815 will be reissued July 7, 2025. 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

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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 and comments on the WVDEP Construction Stormwater General Permit. If you have any further questions or concerns, please do not hesitate to contact Rick Adams of my staff at 304-926-0499 ext. 43763 or by email at rick.d.adams@wv.gov.

Sincerely,

Jeremy W. Bandy
Director

**Response to Public Comments
Permit No. WV0116815**

Comments have been summarized and, in some cases, similar comments have been listed together. Section by Section Comments are listed and sorted by permit section and/or page number starting at comment #4. Comments are shown in italics with the agency response below in **bold**.

1. *Enhanced BMP Requirements. Please reinstate the enhanced BMP standards for discharges into waters other than Tier 1 waters in the 2025 general stormwater permits, including increased inspection times and most importantly more stringent E&S controls. Protecting the waters of WV is important for our economic development especially in regards to tourism, as well as protecting our children and general population.*

To safeguard existing water quality, facilities are mandated to install, operate, and maintain Best Management Practices (BMPs). The Agency deems the general BMPs sufficient and in compliance with the requirements of this Permit, and satisfies the antidegradation requirements of 47 CSR 2 and 60 CSR 5. However, the Director holds the authority to assess the effectiveness and mandate upgrades or installation of enhanced BMPs if existing BMPs should fall short of protecting water quality.

2. *Clarification of Permit Registration Expiration. A commenter is requesting clarification regarding the expiration of registrations under the Permit. It is our understanding that, once a Permit registration has been approved, coverage under the Permit for the registered site and activity remains active, and does not expire, for the full term of the Permit, until a Notice of Termination is approved. Permit registration approval letters will not include an expiration date, other than the expiration of the General Permit, itself. Please confirm if this understanding is correct.*

The Agency concurs with your understanding.

3. *References to NPDES Rule Should Be Deleted. There is no need to make issuance of the Permit or registration under the Permit subject to the NPDES permit rule (47 CSR 10), because the Permit is not a NPDES permit. While the WVDEP may choose to issue the Permit in accordance with the NPDES permit rule, the WVDEP has no authority to subject registrations under the Permit to that rule.*

The NPDES rule establishes the procedures for issuing a wastewater discharge permit, and governs the development of substantive conditions in those permits. Registration under the Permit is a different matter. For example, there are requirements in the NPDES rule relating to public comment prior to issuance of a permit, but there is no requirement for a public comment period for a registration

under a general permit. Making both permit issuance and permit registration

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subject to 47 CSR 10 is needlessly complex, and confuses permit issuance with permit registration.

The Agency issues General Permit WV0116815 in accordance with the NPDES permit rule, 47 CSR 10 is a State National Pollutant Discharge Elimination System (NPDES) Program authorized by the State. This is a permitting program approved by the State Legislature to issue permits, §47-10-3.1. No person shall discharge pollutants from a point source into State waters except as authorized by a State NPDES permit. A NPDES permit issued pursuant to this series shall be deemed to be a permit issued in accordance with W. Va. Code §22-11-4. The Agency issued WV0116815 General permit in accordance with W.Va Code 22-11 and 47 CSR10; the registration issued under the General Permit is to comply with terms and conditions of the General Permit. Every registration is unique to their site condition and has a unique SWPPP and GPP associated with that site, similar to how individual permits have unique operation and maintenance to that site.

4. *Page 2, third paragraph - A commenter is requesting that the transition period for coverage under the 2013 permit be extended from 180 days to 270 days and “unless otherwise determined by the department” be added to the end of the third paragraph.*

The Agency deems the 180 day transition period is appropriate. The following language has been added at the end of the third paragraph “unless otherwise determined by the Agency”.

5. *Page 2, fourth paragraph - A commenter is requesting the fourth paragraph be stricken.*

The Agency concurs with your comment. This paragraph is repetitive so removing it will enable the applicant to focus more on the main points.

6. *Page 2, paragraph six - A commenter is requesting clarification in coverage extension for completed projects that are only awaiting final stabilization and to include slip repairs.*

The Agency concurs with your comment. The language has been clarified and slip repairs included along with seeding, vegetative stabilization activities and proper operation and maintenance of required BMPs.

7. *Page 4, Section A. Terms of Permit - A commenter is requesting clarification to compliance with water quality and groundwater quality standards.*

Page 4 Section A language is self-explanatory. However, The Agency believes that properly designed, installed / constructed, maintained and approved BMPs contained in this Permit are protective to water quality and the existing and designated uses to the receiving waters.

8. *E. – Definition of “Application” – This definition should be revised to specify that it only applies to discharges of stormwater to Waters of the State. The definition should be revised to read as follows: "Application" is the form to be submitted to register a construction project that discharges stormwater to Waters of the State.*

The definition of “Application” is correct the way it is worded: "Application" is the form to be submitted to register a construction project that discharges to Waters of the State.

9. *G.4.a. – Maintaining SWPPPs and GPPs on site is unreasonable for large construction sites. This should be revised to allow for the maintenance of SWPPPs and GPPs in an electronic format. This section should be revised to read as follows: The SWPPP and the GPP shall be signed in accordance with Section C.6 and made available onsite or electronically.*

The Agency concurs with your comment and this section has been revised to include printed or electronic format. Electronic copies offer advantages in many cases; however it is the applicant's responsibility to provide ease of retrieval and access when utilizing electronic storage methods.

10. *G.4.b. – This section may be out of place. Section G.4.b. sets requirements for when a registration application must be filed and should be set forth as a separate section. A commenter is requesting that WVDEP move Section G.4.b to Condition B and title Condition B “Registration Requirements”.*

The Agency considers Section G.4.b. is in an appropriate location.

11. *G.4.b.3 – A commenter is requesting that this section be revised to require submission of the NOI Form, site plan, and SWPPP for discharges to Tier 3 Waters at least 30 days prior to initiating construction rather than 45 days.*

Projects disturbing one to less than three acres that discharge upstream of a Tier 3 Water shall submit the NOI Form, site plan, and Storm Water Pollution Prevention Plan (SWPPP) at least 45 days prior to initiating construction to allow enough time for the public notice procedure (30 days) therefore 45 days is appropriate.

12. *G.4.b.4 – A commenter is requesting that this section be revised to require submission of application and SWPPP at least 45 days prior to initiating construction.*

Large construction projects that will disturb 100 or more acres, shall submit the application and SWPPP at least 90 days prior to construction to allow for the public notice procedure and additional review time therefore 90 days listed in G.4.b.4 is appropriate.

13. *G.4.e.1.E. Access Roads - A commenter is requesting that ditch line capacity be changed to being capable of passing a 2-year, 24-hour precipitation event instead of a 10-year, 24-hour precipitation event.*

The Agency considers the requirement for ditch lines being designed on a 10-year, 24-hour precipitation event appropriate.

14. *G.4.e.1.G. – This section requires the registrant to be responsible for ATV trails. Unless such trails are subsumed in the construction activities, permittees should have no responsibility for identifying or maintaining them. ATV trails and destructions are often impossible for permittees to control and they should not be charged with managing such trails for the WVDEP or landowners. A commenter is requesting that WVDEP remove Section G.4.E.1.G. from the Permit. If WVDEP does not remove the entire section, A commenter is requesting that WVDEP revise the section to only require permittees to identify ATV trails and specify that permittees are not responsible for maintaining or stabilizing ATV trails.*

This section does not require the applicant to be responsible for ATV Trails; however ATV trails to be retained by the landowner must be identified in the original application or through a minor modification to the registration. ATV trails shall be maintained by the applicant and stabilized upon conclusion of construction when not identified in the registration as a landowner accepted trails.

15. *G.4.e.2.A.ii.h. Suggestion will expand the definition of aquatic resources.*

The Agency concurs with this comment. This section has been revised as follows: “All trapped sediments will be disposed of in an upland area where there is no chance of entering nearby aquatic resources (streams, springs and/or wetlands)”.

16. *G.4.e.2.A.iii. Presumptive conditions for discharges to Tier 3 waters. Suggests the Director approves enhanced BMPs in Tier 3 watersheds instead of an antidegradation review process.*

The Agency considers this section to be appropriate and will maintain current phrasing.

17. *G.4.e.2.C.iv. – This section requires the registrant to maintain training records on site. A commenter is requesting that WVDEP revise this section to allow registrants to maintain training records in an electronic format.*

See response to comment 9. The following language has been included in this section: “in printed or electronic format”.

18. *G.4.e.2.C.v. – This section requires the registrant to maintain visual inspection records on site. A commenter is requesting that WVDEP revise this section to allow registrants to maintain visual inspection records in an electronic format.*

See response to comment 9. The following language has been included in this section: “in printed or electronic format”.

19. *G.4.e.2.C.vi. – This section requires the registrant to maintain inspection and maintenance records on site. A commenter is requesting that WVDEP revise this section to allow registrants to maintain inspection and maintenance records in an electronic format.*

See response to comment 9. The following language has been included in this section: “in printed or electronic format”.

20. *Section J. - Permittees should be responsible only for the areas they disturbed. Permittees should not be responsible for ATV trails, logging roads and other land uses unrelated to the permittee’s construction activities. A commenter is requesting that this section be revised to add the following language to the beginning of such section:*

Final stabilization must be achieved by the permittee for only disturbances encompassed by this permit. Permittees are not responsible for achieving final stabilization in areas that are not associated with permitted activities, such as landowner ATV trails, vertical well access activities, agriculture and livestock disturbances, logging operations, etc.

See G.4.e.1.E. Existing access roads are not required to be covered under this permit unless the access roads are upgraded (outside of routine maintenance activities; such as, ditch and culvert cleaning and activities to maintain the original line and grade of the road).

21. *Section J. –A commenter is requesting that WVDEP remove the following language from the first paragraph of Section J: “and all off-site areas impacted by the project”*

Based on past experience, the Agency adheres to the language in the first paragraph of Section J: “and all off-site areas impacted by the project” is appropriate.

22. *Section J - A commenter is requesting information be included in this section to include acreage reduction inspections.*

The Agency concurs with your comment. The following paragraph has been included in section J: “The applicant can receive termination of a portion of the project where final stabilization is not achieved on the entire project. The

area to be terminated can be identified through a minor modification to the registration accompanied with an acreage reduction inspection identifying the stabilized portions of the project.

23. A commenter is requesting several minor edits highlighted as markups to the permit.

The Agency concurs with several requested edits unmentioned in the previous responses therefore several of these have been incorporated into the Permit. These minor edits are not significant.