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STATE OF MARYLAND DEPARTMENT OF THE ENVIRONMENT WATER MANAGEMENT ADMINISTRATION

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM GENERAL PERMIT FOR STORMWATER ASSOCIATED WITH CONSTRUCTION ACTIVITY FINAL DETERMINATION TO ISSUE GENERAL PERMIT

FACT SHEET (OCTOBER 28, 2014)

The Maryland Department of the Environment (MDE) has reached a final determination to issue the National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Associated with Construction Activity (General Permit). MDE intends to issue the general permit with an effective date of January 1, 2015, and a term of five years. Modifications to this General Permit incorporate all federal requirements specified in the Code of Federal Regulations (40 C.F.R. § 122.26 and 40 C.F.R. Part 450) as well as State requirements described under the Code of Maryland Regulations (COMAR 26.08.04). The text of the final General Permit as well as additional information of interest to citizens, applicants, and permittees is available at the webpage for the General Permit: <http://go.usa.gov/gFMW>.

Purpose/Authority

The purpose of the federal NPDES stormwater program is to control pollution generated from runoff associated with industrial activity, including construction, and municipal separate storm sewer systems. An individual or general permit is required for all construction activity in Maryland with a planned total disturbance of one acre or more. Conditions of the permits include compliance with approved erosion/sediment control and stormwater management plans, self-inspection and record keeping. The permit authorizes stormwater discharges from these construction sites. The primary pollutant to be controlled is sediment. The volume of stormwater discharge varies and depends on the site size, weather, and other factors. Authority for Maryland's NPDES General Permit for Construction Activity is through the federal Clean Water Act Section 402, 33 U.S.C. § 1342, the Code of Federal Regulations, 40 C.F.R. § 122.26, the State Environment Article, Title 9, Subtitle 3, and state regulations, COMAR 26.08.04.

This general permit is a joint federal and State permit and subject to federal and State regulations. The Clean Water Act (CWA), federal regulations, and numerous guidelines and policies of the United States Environmental Protection Agency (EPA) provide the federal permit requirements. The Annotated Code of Maryland, Environment Article, Code of Maryland Regulations (COMAR), and policies and guidelines of the Maryland Department of the Environment (MDE) provide the State permitting requirements.

Permit History

MDE issued its first NPDES general permit for stormwater associated with construction activity in 1993. This permit was required for all construction activity disturbing five acres or more. MDE reissued the general permit in 1997 and 2003. In accordance with EPA's Phase II stormwater regulations, the 2003 general permit was required for all construction activity disturbing one acre or more. MDE reissued a subsequent general permit on March 31, 2008, and the 2009 general permit became effective on July 13, 2009. MDE extended the 2009 general permit as of January 1, 2014, and is now terminating the 2009 general permit effective December 31, 2014. The 2014 general permit takes effect January 1, 2015, and expires December 31, 2019.

Significant Changes to Permit Requirements

In conjunction with the issuance of the 2014 General Permit, MDE is also releasing an electronic application, permit tracking, and payment system for use by applicants and permittees. Applicants can access the system at <https://egov.maryland.gov/mde/npdes/Account/Login> after November 16, 2014. MDE expects that all parties will benefit from the new system's capabilities to track permit status and other information. Citizens may review NOIs during the public notification period at a new website, <https://egov.maryland.gov/mde/npdes/PublicNotice/Index>. Language throughout the General Permit reflects changes to the permit submission, transfers, and termination process electronically. MDE intends to continue accepting paper documents under this permit for those who cannot use the electronic system. Applicants sending paper documents must continue to use paper documents throughout the life of the permit (such as for modifications, transfers, or terminations) and cannot use the system to track permit status and print out permits, etc.

Under the Eligibility section (Part I.C), the permit clarifies that a person is eligible to be the permittee only if that person (alone or with others) has control over the permitted activities on the site. This section also clarifies that earth disturbance for mining activity is not eligible for the general permit, but that construction of landfill cells requires permit coverage until the cell ceases construction and begins operating as a landfill accepting wastes. As a further clarification of permit eligibility, the definition of construction activity in Part IX now states that construction activity includes construction-related activities that specifically support the construction activity and involve earth disturbance or pollutant-generating activities of their own, and can include activities associated with equipment staging yards, materials storage areas, excavated material disposal areas, and borrow areas. This change is consistent with existing MDE policy and is similar to the text of EPA's 2012 Construction General Permit. The definition states that construction activity does not include earth disturbance for agricultural and silvicultural production activities such as for orchards, cultivated crops, pastures, range lands, and forest lands, unless those activities involve construction of structures, roads, or other appurtenances. This is consistent with the Clean Water Act and NPDES regulatory text that exclude these activities from those required to obtain NPDES permits. Note that the draft General Permit included provisions requiring discrete disturbed areas within one quarter mile of each other to be included on the same NOI. MDE considered public comments on these provisions and decided to remove them.

The permit allows for emergency authorization for earth-disturbing activities prior to obtaining general permit coverage in very limited circumstances in response to a public emergency, such as a natural disaster. The operator of such activities must inform MDE, obtain written authorization within 24 hours of beginning disturbance, and follow up with a complete NOI within 7 days. This procedure recognizes that earth disturbance must begin in some critical and unforeseen situations to avoid imminent endangerment to human health, public safety, or the environment, or to reestablish essential public services. It is similar to emergency authorization allowed under EPA's 2012 Construction General Permit, but with generally more stringent notification procedures.

Permittees whose projects are currently covered under a previous version of the general permit and continuing on or after January 1, 2015, must apply for coverage under this general permit by December 31, 2014. Permittees who submit an NOI by the deadline are considered covered by this General Permit while MDE reviews the NOI. After review, MDE will provide documentation granting coverage under this general permit or provide notice of denial of coverage. MDE included parallel language for individual permits reaching their expiration date for which MDE has determined the 2014 General Permit is now applicable. Applicants for new projects must apply in sufficient time to allow for the 14-day public notification period, and must obtain permit coverage before beginning earth disturbance. In all cases, the applicant must document to MDE that the appropriate approval authority has approved the erosion and sediment control plan.

Part III.A of the permit describes allowable and unallowable non-stormwater discharges. MDE has modified this section to:

- Clarify that discharges from concrete and asphalt plants, including batch plants, are not authorized under this permit;
- Clarify that discharges from sites with known contamination from pollutants other than sediment are not authorized;
- Include certain prohibitions, required under EPA regulations at 40 C.F.R. Part 450, related to discharges of washout and cleanout of concrete, fuels and oils, and other construction materials; and
- Clarify that the permit authorizes discharges from dewatering from construction excavations where managed by an appropriate control. MDE is also including this requirement to implement the federal effluent limitation guideline at 40 C.F.R. § 450.21(c) for Dewatering.

Part III.B.3 of the permit highlights the fact that the 2011 Erosion and Sediment Control Standards and Specifications require a person developing an erosion and sediment control plan to consider State listed rare, threatened, and endangered species habitat. Permittees are directed to contact the plan approval authority to determine additional regulatory requirements.

Part III.D of the permit requires the permittee to ensure site personnel are trained to comply with the permit. Part III.E refers the permittee to the Maryland fertilizer law that is outside the scope of the General Permit but nevertheless requires compliance.

Part IV.A of the permit includes new language required by the federal effluent limitation guidelines at 40 C.F.R. § 450.21. The permittee must minimize the discharge of pollutants through wash waters, minimize the exposure of construction materials and wastes to stormwater (except in certain limited circumstances), and take measures to prevent potential pollutant spills and leaks and respond to them when they happen.

Some additional requirements of the federal effluent limitation guidelines at 40 C.F.R. § 450.21 are not written directly into the permit because they are implemented through Maryland's erosion and sediment control regulations and the permit requirement to have an approved erosion and sediment control plan. Prior to earth disturbance, the site must have a plan written to MDE's Standards and Specifications for Soil Erosion and Sediment Control and approved by the appropriate approval authority. Four sections of the federal effluent limitation guidelines are effectively covered by the Standards and Specifications for Soil Erosion and Sediment Control and erosion and sediment control regulations: 40 C.F.R. § 450.21(a), Erosion and Sediment Controls; 40 C.F.R. § 450.21(b), Soil Stabilization; and 40 C.F.R. § 450.21(f), Surface Outlets. The following table outlines the specific requirements of the federal effluent limitation guidelines and the parts of the Standards and Specifications or erosion and sediment control regulations that set corresponding requirements for Maryland permittees. MDE provides further information about the Standards and Specifications for Soil Erosion and Sediment Control, as well as their full text, at:

Changes to the public notification process for NOI submissions are also being incorporated into this permit. MDE is revising the section of the general permit related to the public notification period (now in Part II.B) of the general permit to change the public notification period from 45 days for sites disturbing 3 acres or more and 30 days for sites disturbing 1 acre to less than 3 acres to the same period for all sizes of disturbance: 14 days. This time period is consistent with the waiting period EPA included in its own Construction General Permit issued in 2012 (EPA's permit is required in states and territories where it is the permitting authority). All applicants must still obtain erosion and sediment control approval before MDE will issue coverage under the general permit. Note that the projects that must obtain coverage under the general permit include not only residential and commercial construction but also projects undertaken to address significant public needs, such as construction of schools, transportation infrastructure, parks, and public safety facilities.

EPA's effluent limitation guidelines, as originally issued, included a numerical limit for turbidity from construction sites of certain sizes (at 40 C.F.R. § 450.22(a) and (b)). Effective May 5, 2014, EPA withdrew the numerical limit in the guidelines, reserving the section of the regulations for use in any future rulemaking. As a result, MDE's General Permit does not include this part of the effluent limitation guidelines. Please see <http://water.epa.gov/scitech/wastetech/guide/construction/index.cfm> for more information about EPA's actions regarding the numerical limit.

Part IV.B clarifies that a permittee which has identified a release of significant amounts of sediment must notify MDE.

MDE modified Part IV.C (Monitoring and Records) to indicate that:

- The person conducting self-inspections must hold certificate of attendance at training program in accordance with Environment Article § 4-104 and COMAR 26.17.01.06;
- Permittee self-inspections need not begin until earth disturbance first occurs;
- Self-inspections on disturbed areas are required at least once every week, on a Sunday to Saturday basis;
- Self-inspections on previously disturbed portions of a site returning to stabilized status are required only monthly;
- Permittees must post a notice of permit coverage on or near the construction site: and
- In the event any permittee is required to conduct monitoring, requiring the use of monitoring procedures in accordance with 40 CFR 122.44(i)(1)(iv).

MDE also clarified the list of records that must be maintained and the record retention responsibilities for permittees who transfer or terminate their permits. The draft General Permit included a provision allowing certain records to be kept off the construction site, but this conflicted with other Maryland regulatory provisions, and was removed.

The permit updates the penalties available under the Clean Water Act in accordance with the current text of federal law and regulation.

Effluent Limitation Guideline Citation	Effluent Limitation Guideline Requirement	MDE Standards and Specifications or Regulatory Citation (COMAR)	Notes
40 C.F.R. § 450.21(a)(1)	Control stormwater volume and velocity to minimize soil erosion in order to minimize pollutant discharges	Standards and Specifications in general	MDE designed the Standards and Specifications in order to control stormwater volume and velocity to minimize erosion.
40 C.F.R. § 450.21(a)(2)	Control stormwater discharges, including both peak flowrates and total stormwater volume, to minimize channel and streambank erosion and scour in the immediate vicinity of discharge points	Standards and Specifications D-4, E-7, and E-8	
40 C.F.R. § 450.21(a)(3)	Minimize the amount of soil exposed during construction activity	Standards and Specifications A-3.4, COMAR 26.17.01.01.B(13) and 26.17.01.07	Grading unit not to exceed 20 acres at a time
40 C.F.R. § 450.21(a)(4)	Minimize the disturbance of steep slopes	Standards and Specifications A-2 and A-3.3	The concept plan developed under A-2 considers topography in site design.
40 C.F.R. § 450.21(a)(5)	Minimize sediment discharges from the site. The design, installation and maintenance of erosion and sediment controls must address factors such as the amount, frequency, intensity and duration of precipitation, the nature of resulting stormwater runoff, and soil characteristics, including the range of soil particle sizes expected to be present on the site	Standards and Specifications Page I.1 and Section A	Page I.1 notes the factors influencing soil erosion that must be considered in developing a plan. All parts of Section A, Planning and Design, provide further requirements for proper consideration of these factors in plan development.
40 C.F.R. § 450.21(a)(6)	Provide and maintain natural buffers around waters of the United States, direct stormwater to vegetated areas and maximize stormwater infiltration to reduce pollutant discharges, unless infeasible	Standards and Specifications A-3.2	
40 C.F.R. § 450.21(a)(7)	Minimize soil compaction - minimizing soil compaction is not required where the intended function of a specific area of the site dictates that it be compacted	Standards and Specifications A-2 and A-3	The design process, starting with the concept plan and working in concert with the Stormwater Management planning process, requires minimization of soil compaction in implementation of Environmental Site Design
40 C.F.R. § 450.21(a)(8)	Unless infeasible, preserve topsoil - preserving topsoil is not required where the intended function of a specific area of the site dictates that the topsoil be disturbed or removed	Standards and Specifications A-5.I.H.6	
40 C.F.R. § 450.21(b)	Stabilization of disturbed areas must, at a minimum, be initiated immediately whenever any clearing, grading, excavating or other earth disturbing activities have permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 calendar days. Stabilization must be completed within a period of time determined by the permitting authority.	COMAR 26.17.01.07.B(6)(f)	Following initial soil disturbance or redisturbance, permanent or temporary stabilization is required within three calendar days as to the surface of all perimeter controls, dikes, swales, ditches, perimeter slopes, and all slopes steeper than 3 horizontal to 1 vertical (3:1); and seven calendar days as to all other disturbed areas on the project site except for those areas under active grading.
40 C.F.R. § 450.21(f)	When discharging from basins and impoundments, utilize outlet structures that withdraw water from the surface, unless infeasible	Standards and Specifications G-1 and G-2	

Term of Permit

The permit is effective on January 1, 2015, and expires on December 31, 2019. Coverage under the general permit will expire when the general permit is reissued or expires, when a Notice of Termination form has been completed and received by MDE, or when MDE administratively terminates coverage for a site, whichever occurs first.

Fee

The permit fee is as set in COMAR 26.08.04.09-1. MDE will not require the payment of an additional fee for applicants who obtained coverage under the 2009 General Permit on or after January 1, 2013, and continue to hold active coverage as of December 31, 2014. However, such applicants must still submit to MDE a new Notice of Intent for coverage under the 2014 General Permit via the electronic system or on paper by the deadline of December 31, 2014, in order to qualify.

Maryland's Soil Erosion and Sediment Control and Stormwater Management Programs

This general permit contains numerous references to Maryland state standards and regulations regarding soil erosion and sediment control (ESC) and post-construction stormwater management requirements, which are equivalent to or exceed standards described in the CFR and EPA's current General Permit for Stormwater Associated with Construction Activity.

Maryland's Erosion Control Law and regulations specify the general provisions for program implementation; provisions for delegation of enforcement authority; requirements for erosion and sediment control ordinances; exemptions from plan approval requirements; requirements for training and certification programs; criteria for plan submittal, review, and approval; procedures for inspection and enforcement; and applicant responsibilities. Clearly defining minimum standards is essential to make erosion and sediment control work. MDE has established minimum criteria for effective erosion and sediment control practices. The 2011 Standards and Specifications for Soil Erosion and Sediment Control are incorporated by reference into State regulations and serve as the official guide for erosion and sediment control principles, methods, and practices. Further information about these updated Standards and Specifications is available on MDE's Website. Under the Erosion and Sediment Control Regulations at COMAR 26.17.01.08.G, some sites meeting certain grandfathering conditions may continue to operate under previously approved plans meeting the 1994 Standards and Specifications for Soil Erosion and Sediment Control.

Maryland's Stormwater Management Act was passed by the Maryland General Assembly in 1982. The primary goal of the State and local programs established by the Act is to "maintain after development conditions, as nearly as possible, the predevelopment runoff characteristics." This program covers the permanent stormwater Best Management Practices installed on the developed site, rather than the controls used during construction activities. On April 24, 2007, Governor Martin O'Malley signed the "Stormwater Management Act of 2007" (Act), which became effective on October 1, 2007. The Act requires that environmental site design (ESD) be implemented to the maximum extent practicable through the use of nonstructural best management practices and other better site design techniques. MDE has developed guidance including changes to regulation and a supplement to the Maryland Stormwater Design Manual for ESD

(http://mde.maryland.gov/programs/Water/StormwaterManagementProgram/MarylandStormwaterDesignManual/Pages/Programs/WaterPrograms/SedimentandStormwater/stormwater_design/index.aspx).

Applicants for the General Permit include information on their NOIs listing the stormwater BMPs expected to be used at the time of application. The General Permit requires that permittees obtain approval (from the appropriate approval authority, such as a county government) for the Stormwater Management Plan prior to beginning earth disturbance, unless exempt or waived by the approval authority.

Judicial Review of the General Permit

MDE's final determination is subject to judicial review at the request of any person that meets the threshold standing requirements under federal law and is an applicant or participated in the public participation process through the submission of written or oral comments. Requests for judicial review in accordance with §1-601 and §1-605 of the Environment Article must be made to the appropriate circuit court on or before December 1, 2014. The permit record is available for review by contacting the Compliance Program, Water Management Administration, Maryland Department of the Environment, 1800 Washington Blvd., Suite 420, Baltimore, Maryland 21230-1708, or by calling (410) 537-3019.