



MARYLAND DEPARTMENT OF THE ENVIRONMENT

1800 Washington Boulevard • Baltimore MD 21230

410-537-3000 • 1-800-633-6101

Martin O'Malley
Governor

Shari T. Wilson
Secretary

Anthony G. Brown
Lieutenant Governor

Robert M. Summers, Ph.D.
Deputy Secretary

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

The Maryland Department of the Environment (MDE) has reached a final determination to issue a National Pollutant Discharge Elimination System (NPDES) general permit for construction activity. MDE has drafted a general permit designed to comply with EPA regulations and to control stormwater pollutant discharges. The permit is issued for five years.

Purpose/Authority

The purpose of the federal National Pollutant Discharge Elimination system (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 1 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. Authority for Maryland's NPDES General Permit for Construction Activity is through the federal Clean Water Act Section 402 and the Code of Federal Regulations (40 CFR 122.26), and the State Environment Article, Title 9, Subtitle 3: 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. When MDE gave notice of its tentative determination to reissue the general permit in early 2008, a number of stakeholders made significant comments regarding the provisions of that draft general permit. MDE responded by issuing an interim general permit (with minor changes) on March 31, 2008, with an effective date only through December 31, 2008. MDE initiated a series of public meetings with stakeholders separate from the formal permitting process to discuss changes to permit provisions. The attendees at the public meetings included representatives of environmental organizations, homebuilder organizations, design professionals, state and local governments, and other businesses that manage construction projects. Participants discussed a range of changes to permit provisions, and reached a level of consensus on some of these. MDE considered these permit provisions in its development of the general permit. These permit provisions focus on the public notification and participation processes at the time of Notice of Intent submission, as well as a new provision regarding actions to be taken when a significant amount of sediment leaves the construction site. MDE issued a tentative determination to issue the general permit on October 24, 2008, and held a public hearing on the general permit on November 24, 2008. MDE also received written comments on the general permit. MDE's response to written comments and comments made at the public hearing may be found on MDE's website.

Maryland's Erosion and Sediment Control Program History

Legislation established to protect Maryland waters from various pollutants has existed since the early 1930s. However, it wasn't until 1961 that Maryland's Attorney General determined sediment to be a pollutant. This determination was based upon an interpretation of a 1957 State statute and authorized sediment control regulations to be developed. A statewide sediment control program was mandated in 1970 when the General Assembly passed the Sediment Control Law. From an historical perspective, Maryland's incentive for having an erosion and sediment control program is the Chesapeake Bay. From a practical standpoint, federal involvement via the National Pollutant Discharge Elimination System (NPDES) provides an incentive for State and local program development. Having an existing program has made compliance with NPDES requirements easier. The Chesapeake Bay initiatives in 1983, the U.S. Environmental Protection Agency's (EPA) 319 Nonpoint Source Program, and the NPDES municipal stormwater program have stimulated additional emphasis.

The program developed in 1970 is essentially with an approved plan being required for any earth disturbance of 5,000 square feet or more and 100 cubic yards or more; plan approval exemptions for agricultural uses; plan review and approval by local Soil Conservation Districts (SCD); grading ordinance adoption and project inspection by local jurisdictions; utility construction inspection by the Washington Suburban Sanitary Commission (WSSC); and criminal penalties for sediment pollution. Various programmatic improvements have included requiring sediment control plan approval prior to issuing grading and building permits (1973); requiring training and certification of "responsible personnel" (1980); shifting enforcement authority from local to State control and establishing delegation criteria (1984); limiting the exemption for single-family residential construction on 2-acre lots (1988); requiring NPDES stormwater discharge permits for construction activity (1991); and subjecting agricultural land management practices to enforcement action for sediment pollution (1992).

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 [1994 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.

Contractors and other construction industry personnel knowledgeable about erosion and sediment control principles, implementation and maintenance techniques, and specifications associated with various best management practices are an essential component of Maryland's statewide sediment control program. Well-trained construction personnel help to ensure that quality implementation and maintenance occur. Since 1980, many construction industry personnel have attended the Maryland Department of the Environment's (MDE) "Responsible Personnel Training for Erosion and Sediment Control" program.

Maryland's Stormwater Management Program History

The 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." Regulations promulgated by the State in 1983 define this to mean, for quantity control, on-site control of the 2 and 10 year storm events. In addition, for quality control, the Administration had established a list of preferred management practices. Pursuant to the list, local officials responsible for plan review were required to investigate the feasibility of infiltration of the first half inch of runoff – the so-called first flush. If infiltration was not feasible, other practices could be used. These other practices, in order of preference, were vegetated swales, retention ponds, extended detention, and detention facilities. Infiltration was preferred because it offered the highest potential to reduce pollutants such as sediment and phosphorus, addressed groundwater recharge and maintained baseflow, and mitigated thermal impacts. All incorporated counties and municipalities in Maryland were required to adopt ordinances by 1984, that established these controls on every development that disturbed more than 5,000 square feet of land.

In 2000, Maryland's stormwater management approach for new development projects used a unified sizing criteria for stormwater best management practices (BMPs) to meet pollutant removal goals, maintain groundwater recharge, reduce channel erosion, prevent overbank flooding, and pass extreme floods. See the "2000 Maryland Stormwater Design Manual" (http://www.mde.state.md.us/Programs/WaterPrograms/SedimentandStormwater/stormwater_design/index.asp) Performance standards are established for the design criteria of five groups of structural and nonstructural BMPs. Innovative site planning is an integral part of this approach relying on nonstructural site design techniques (e.g., roof top disconnection, natural area conservation, impervious surface area reductions, etc.) that reduce the generation of stormwater runoff and the reliance on structural BMPs. Maryland encourages wise, environmentally sensitive (site) designs (ESD) that reduces the generation of runoff borne pollution and promotes infiltration using groundwater recharge criteria from Natural Resources Conservation Service (NRCS) soil type data. Maryland's approach also requires that appropriate volumes be controlled to protect stream stability (channel protection volume) and large rainfall events (overbank and extreme flood protection). This stormwater management approach provides flexibility to localities and developers/designers by ensuring that innovative site design techniques (e.g., nonstructural BMPs) blend into local grading, building, and development codes while mandating a specific performance standard (e.g., 80% removal of TSS and 40% removal of P).

On April 24, 2007, Governor Martin O'Malley signed the "Stormwater Management Act of 2007" (Act), which became effective on October 1, 2007. Prior to this Act, environmental site design (ESD) was encouraged through a series of credits found in Maryland's Stormwater Design Manual. The Act requires that 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 proposed changes to regulation and a supplement to the Maryland Stormwater Design Manual for ESD (<http://www.mde.state.md.us/Programs/WaterPrograms/SedimentandStormwater/swm2007.asp>).

Permit Requirements

The permit includes requirements from previous permits regarding self-inspection and record keeping. The permit increases the opportunity for public participation in the NOI approval process by providing a delay before approval of NOIs by MDE so that citizens can be advised via MDE's Website that the NOIs have been submitted and erosion and sediment control plans have also been submitted for review by the plan approval authority. The permit includes a new section that requires that construction sites be monitored for a number of significant sediment discharge problems that, if observed, trigger review of site conditions on a first occasion and then review of plans to see if additional controls are needed. The permit also lists several key points to enhance environmental protection that must be addressed by the applicant when they are developing plans required by the permit. The permit also incorporates a section from EPA's general permit language that states that a permittee must select, install, implement and maintain control measures at a construction site that minimize pollutants in the discharge as necessary to meet applicable water quality standards and that, in general, the stormwater controls developed, implemented, and updated consistent with the laws and regulations cited in the general permit are considered as stringent as necessary to ensure that discharges covered by this permit do not cause or contribute to an excursion above any applicable water quality standard. The permit also includes a section that states that if the discharge covered by this permit enters a water with an established or approved Total Maximum Daily Load (TMDL), the permittee must implement measures to ensure that the discharge of pollutants from the site is consistent with the assumptions and meets the requirements of the approved TMDL, including any specific wasteload allocation that has been established that would apply to the discharge. Permittees currently holding any previous version of the general permit will be covered by the new general permit when it is issued.

Term of Permit

The permit is effective on January 1, 2009, and expires on December 31, 2013. Coverage under the general permit will expire when the general permit is reissued or expires, or when a Notice of Termination form has been completed and received by MDE, whichever occurs first.

Fee

The permit fee is as set in COMAR 26.08.04.09-1.

Commitment to Update Maryland Standards and Specifications for Soil Erosion and Sediment Control

MDE has received numerous suggestions to improve sediment control practices reduce turbidity and to update the turbidity water quality standard in MS4 permits, the new stormwater regulations and the general construction permit for stormwater. While a number of these changes were incorporated, other suggestions relate directly to erosion and sediment control, and to be most effective, must be incorporated into the technical standards for erosion and sediment control. In addition, MDE had already identified the need to update these technical standards.

Therefore, MDE will initiate a comprehensive review of the State's erosion and sediment control standards in early 2009 and will develop proposed modifications to the "Maryland Standards and Specifications for Soil Erosion and Sediment Control" by May 30, 2010. Areas to be evaluated will include: ESD requirements, flocculants, new stabilization standards, new BMP standards, etc. MDE will work with all stakeholders including the State Soil Conservation Committee (SSCC) technical review workgroup as part of this development and update process. MDE will continue to research and

investigate the area of using turbidity as a trigger for identifying excessive pollutants (e.g., sediment) and evaluate our current turbidity water quality standard.

The general permit for stormwater associated with construction activity contains several new provisions that address how the adequacy of existing sediment and control measures are to be assessed during the construction period. These provisions describe, in narrative terms, limits on discharges from any site and conditions under which the approved erosion and sediment control plan would be reviewed, evaluated, and potentially modified. These conditions include, but are not limited to observations of:

- concentrated flows of stormwater such as rills, rivulets or channels that cause erosion when such flows are not filtered, settled or otherwise treated to remove sediment;
- turbid flows of stormwater that are not filtered, settled or otherwise treated to reduce turbidity;
- deposits of sediment at the construction site in areas that drain to unprotected stormwater inlets or catch basins that discharge directly to surface waters;
- deposits of sediment from the construction site on public or private streets outside of the permitted construction activity;
- deposits of sediment from the construction site on any adjacent property outside of the permitted construction activity;
- or discharges from the construction site to municipal conveyances, curbs and gutters, or streams running through or along the site where visual observations show that the discharges differ from ambient conditions in terms of turbidity so as to indicate significant amounts of sediment present in them.

Availability of General Permit

Any person who wishes to review the final general permit may do so by visiting MDE's website at http://www.mde.state.md.us/Permits/WaterManagementPermits/water_applications/gp_construction.asp. In addition, a person may review the final general permit by contacting Ms. Karen Kotofski-Smith at (410) 537-3510 to make an appointment. The information is available for review during MDE's normal working hours, 8:00 a.m. to 5:00 p.m. Monday through Friday. Copies of the document may be procured at a cost of \$0.34 per page.