

**General Permit for Stormwater
Associated with Construction Activity
(NPDES Number MDR10, State
Discharge Permit Number 09GP)**

Highlighting new provisions

October 21, 2009

Permit History

- A legal challenge to the new general permit for stormwater related to construction from Waterkeepers Alliance.
- Key point of challenge was notice and public participation provisions, not technical standards.
- The interim general permit that was in effect expired on December 31, 2008. MDE issued only individual discharge permits between January 1, 2009 and July 13, 2009.

Permit History

- MDE issued a tentative determination for the new permit in Late 2008.
- The permit was challenged again by the Waterkeepers Alliance.
- Settlement provisions require MDE to use its discretionary authority to require individual permits for large and mid-sized projects and for secondary review for discharges to impaired waters. ted.

Key New Provision

- *Individual discharge permits for all construction sites disturbing 150 acres or more that discharge stormwater to waters impaired by pollutants associated with construction activity.*

Key New Provision

- *Individual permits will also be required for construction sites disturbing between 30 and 150 acres that discharge to waters impaired by pollutants associated with construction activity **if** MDE receives a timely objection to the NOI that credibly supports the conclusion that, due to site-specific issues, applicable technical standards included under the general permit are not sufficient to ensure the protection of water quality standards.*

Permit Handling Change

- In order to better accommodate public participation in the process to obtain general permit coverage, MDE will scan NOI forms and enter the scan and related data into a database that is available on MDE's website.

Key New Provision

- *The posting of the project in the database starts a minimum 45-day public participation period for sites with 3 acres or more of disturbed area or a 30-day period for sites with 1 to less than 3 acres of disturbed area. During this time, citizens may ask to review the available erosion and sediment control and stormwater management plans at the approval authorities for those plans.*

Key New Provision

- *MDE will not approve coverage under the general permit until the public participation period ends and the applicant provides notification that the erosion and sediment control plan for the site has been approved by the appropriate authority.*
- *Earth disturbance on the site cannot begin until after coverage is issued and the site has an approved stormwater management plan.*

Key New Provision

- *Citizens may object to an NOI and request that MDE require an individual permit for a specific site. The Director of WMA will decide if an individual permit will be required based on an evaluation of all comments received.*

Key New Provision

- *The general permit requires that erosion and sediment control plans and stormwater management plans (except those plans for sites previously covered under an earlier version of the general permit) include a written explanation that the plan addresses the following eight points.*

- Utilization of environmental site design
- Maintenance of limits of disturbance to protect natural areas
- Control of construction equipment and vehicles
- Evaluation and appropriate limitation of site clearing

- Identification of soils at high risk for erosion and advanced stabilization techniques to be used
- Identification of steep slopes and designation of limitations on clearing them
- Evaluation and designation of site area for phasing or sequencing
- Evaluation and designation of stabilization requirements and time limits and protection measures for discharges to the Chesapeake Bay, impaired waters or waters with an established Total Maximum Daily Load

Key New Provision

- *The general permit requires that if the stormwater discharge from a site enters a water with an established or approved 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.*

New Site Monitoring Provisions

- *If a significant sediment discharge occurs the permittee will be required to inspect, evaluate and, if needed, repair or install all site controls included in the approved erosion and sediment control plan.*
- *The permittee must notify MDE and the plan approval authority about the event.*
- *If a second event occurs the permittee is required to have an engineer evaluate if the erosion and sediment control plan is adequate or whether additional on-site practices or plan modifications are needed and advise MDE and the approval authority.*
- *The permit includes requirements for prevention of the discharge of significant amounts of sediment and lists reasonable measures that all sites must take.*

New Site Inspection Provision

- *The permittee must conduct inspections weekly and the next day after a rainfall event resulting in runoff. Some earlier permits required inspection the next business day after a rainfall event resulting in runoff, but the new permit requires inspection the next day.*

New Public Access Provision

- *The permit requires that all plans for construction activity and any reports prepared pursuant to this permit, including self-inspection information, shall be available to the public.*
- *Upon request by the public, the permittee covered by this general permit shall make such documents available, with the exception of applicable portions of documents claimed as confidential in accordance with 40 Code of Federal Regulations (CFR) Part 2.*

Permit Boilerplate

- *The permittee must select, install, implement and maintain control measures (i.e., BMPs, controls, practices, etc.) at the construction site that minimize pollutants in the discharge as necessary to meet applicable water quality standards and implement the control measures from commencement of construction activity until permanent stabilization is complete.*
- *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.*

Re-opener Clause

- *At any time during the construction and stabilization phases until permit coverage is terminated, MDE may determine that the permittee's stormwater discharges may cause, have reasonable potential to cause, or contribute to an excursion above any applicable water quality standard.*
- *If such a determination is made, MDE will require the permittee to modify the stormwater controls to adequately address, achieve and document the identified water quality concerns, submit valid and verifiable data and information that are representative of ambient conditions and indicate that the receiving water is attaining water quality standards, and/or cease discharges of pollutants from construction activity and submit an individual permit application.*

- Please contact *Jesse Salter* or *Karen Smith* in the WMA Compliance Program at 410-537-3510 for assistance with specific NOIs or if there are any questions regarding individual or general permit coverage.