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To: [HearingComments, DNREC \(MailBox Resources\)](#)
Subject: Comments on NPDES Permit Number: DE 0051268
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Attachments: [Comments to 2020 Draft DNREC General Permit - 20201215.docx](#)

Good afternoon,

Please accept my attached comments submitted during the public comment period for the **Delaware Draft Construction General Permit (State Permit Number: WPCC 3082/20; NPDES Permit Number DE 0051268)**. Please let me know if you have any questions with my attached comments or you have any issue with the attachment.

Thank you.

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Comments to the 2020 Delaware Department of Natural Resources & Environmental Control General Permit (GP) Authorization for Discharges from Construction Activities under the National Pollutant Discharge Elimination System (DE 0051268)

Submitted to the Delaware Department of Natural Resources & Environmental Control (DNREC)

NPDES Permit No. DE 0051268 – Draft Comments:

1. It is recommended that the draft GP consistently use the term “appropriate plan approval agency” defined in Part 1.G. The following parts of the draft GP (Part 1.C.5 2nd paragraph; Part 1.E.5.c) use the term ‘appropriate approval agency’ and need to be updated to read “**appropriate plan approval agency**”.
2. Part 1.C.10 describes the requirement for permittees to post a notice of permit coverage but includes language that may be overreaching for DNREC to enforce on the permittees. Part 1.C.10 of the draft GP states:

“If the active part of the construction site is not visible from the nearest public road, then place the notice of permit coverage in a position that is visible from the nearest public road and as close as possible to the construction site.”

If the permittees project location is truly not visible from the public right-of-way, it is unclear to what extent the draft GP wants the permittee to post their notice of permit coverage in order to be visible to a public right-of-way. Additionally, by the permittee attempting to place the notice of permit coverage closer to a public right-of-way and moving a greater distance away from the construction site, the permittee may have to install a posting on private property or within the roadway easements owned by local or state agencies (DE Department of Transportation, County Roads, etc.); and, may not have the permission or authority to install the posting.

It is recommended that the second paragraph be deleted from Part 1.C.10 of the draft GP.

3. There is conflicting information in the draft GP regarding pavement wash waters and what is allowed to enter a stormwater conveyance or storm drain inlet. Part 1.D.1.4.d of the draft GP states: *“It is prohibited to hose or sweep tracked-out sediment into any stormwater conveyance, storm drain inlet or waters of the State.”* Additionally, Part 1.D.1.5.d states: *“It is prohibited to hose down or sweep soil or sediment accumulated on pavement or other impervious surfaces into any stormwater conveyance, storm drain inlet, or Waters of the State.*

However, both Part 1.D.1.4.d and Part 1.D.1.5.d of the draft GP are in conflict with Part 1.B.3 which lists the non-stormwater discharges authorized under the draft GP. Part 1.B.3.h states:

“It is prohibited to direct pavement wash waters directly into any water of the U.S., storm drain inlet, or stormwater conveyance, unless the conveyance is connected to a sediment basin, trap, or similarly effective control:”

To avoid conflicting information and consistency for the permittees, it is recommended that the following updates be made (**below in bold**) to the draft GP:

- Part 1.D.1.4.d: *“It is prohibited to hose or sweep tracked-out sediment into any stormwater conveyance, storm drain inlet or waters of the State **unless the conveyance is connected to a sediment basin, trap, or similarly effective control.**”*
- Part 1.D.1.5.d: *“It is prohibited to hose down or sweep soil or sediment accumulated on pavement or other impervious surfaces into any stormwater conveyance, storm drain inlet, or Waters of the State **unless the conveyance is connected to a sediment basin, trap, or similarly effective control.**”*

4. Part 1.D.1.8.b of the draft GP states: *“Where there is evidence of sediment accumulation adjacent to the inlet protection measure, remove the deposited sediment by the end of the same business day in which it is found or by the end of the following business day if removal by the same business day is not feasible.”*

The draft GP does not elaborate on what is considered *“...evidence of sediment accumulation adjacent to the inlet protection measure...”* Is it sediment staining on concrete gutters or asphalt pavement? Is it a quarter of an inch or one or more inches of accumulation? Is it when the sediment accumulation reaches 50-percent of the vertical height of the inlet protection measure installed around a yard drain? The draft GP should define an accumulation of sediment that would trigger a maintenance activity.

Therefore, it is recommended that Part 1.D.1.8.b of the draft GP be modified to read:

*“Where **the sediment accumulation adjacent to the inlet protection measure has reached fifty (50) percent the vertical height of the measure**, remove the deposited sediment by the end of the same business day in which it is found or by the end of the following business day if removal by the same business day is not feasible.”*

5. The draft GP adds requirements for the pollution prevention measures that are to be implemented onsite and documented in the Stormwater Pollution Prevention Plan (SWPPP) that are burdensome to the permittees and do not align with standard industry practice. Part 1.D.4.1 of the draft GP states:

“For material inventory, document the storage and use of the following materials:”

- a. Concrete*
- b. Detergents*
- c. Paints (enamel and latex)*
- d. Cleaning solvents*
- e. Pesticides*
- f. Wood scraps*
- g. Fertilizers*
- h. Petroleum-based products*

It is an industry standard for the SWPPP to document the delivery, storage and disposal of most of the above-mentioned construction materials, but not for the “use” of the materials. The draft GP is requiring the permittees to document in their SWPPP the use of concrete and paints? How does a permittee use wood scraps? This requirement is burdensome to the permittees and does not provide any benefits to the environment. Additionally, why is the permittee required to document in the SWPPP the storage of wood scraps? Whether the scraps of lumber are for interior use (no pollutant potential) or the scraps are from cut external pressure-treated lumber (manufactured to be outdoors subject to rain and snowmelt), the requirement to document the storage of wood scraps in the SWPPP is further burdensome to the permittees and unnecessary.

It is recommended that Part 1.D.4.1 of the draft GP be updated to state:

“For material inventory, document the storage ~~and use~~ of the following materials:”

- a. Concrete*
- b. Detergents*
- c. Paints (enamel and latex)*
- d. Cleaning solvents*
- e. Pesticides*
- ~~*f. Wood scraps*~~
- f. Fertilizers*
- g. Petroleum-based products*

6. Part 1.D.4.3.a of draft GP states:

“All waste materials shall be collected and stored in securely lidded dumpsters in a location that does not drain to a waterbody.”

It is recommended that Part 1.D.4.3.a of the draft GP be updated to include the text below (in bold) to read:

*“All waste materials shall be collected and stored in securely lidded dumpsters in a location that does not drain to a waterbody. **For dumpsters that do not have lids, provide either***

- **cover (e.g., a tarp, plastic sheeting, temporary roof) to minimize exposure of wastes to precipitation, or***
- **a similarly effective means designed to minimize the discharge of pollutants (e.g., secondary containment)***

Minimization of exposure is not required in cases where the exposure to precipitation will not result in a discharge of pollutants.”

7. Part 1.D.4.3 of the draft GP includes additional measures that are incredibly prescriptive for a general permit. Part 1.D.4.3.c of the draft GP states: *“The dumpsters shall be emptied a minimum of twice per week...”*; and, Part 1.D.4.3.e of the draft GP states: *“Trash cans shall be placed near the construction trailer.”* Why are these specific items being imposed upon the permittee rather than suggested best management practices to control the containment of trash and construction debris? Regardless if it takes a permittee a week or more to fill up a dumpster, the draft GP is requiring the permittee to pay to ‘empty’ it twice per week. Regardless if the permittee is properly managing the trash and construction debris onsite, the draft GP is requiring the permittee to install trash cans near the construction trailer.

It is recommended that the draft GP be updated as follows:

- Part 1.D.4.3.c of the draft GP changed to read: “The dumpsters shall be **emptied when full which may be once or more per week.**”*
- Part 1.D.4.3.e of the draft GP changed to read: “Trash cans **may** be placed near the construction trailer, as needed.”*

8. Part 1.D.4.5 of the draft GP (Spill Prevention) uses the terms “designated areas” and “fueling areas” with regards to where fueling will take place and what best practices should be implemented at these areas. However, this portion of the draft GP does not elaborate on what ‘areas’ this pertains to. Is it the area of dedicated, bulk fuel storage that is a stationary location for fueling during land development operations; or, does it apply to any area of fueling which can either be a mobile refueling truck employed by the land development operator, or everywhere that homebuilding subcontractors fill up their small gas powered equipment (e.g. generators, compressors, etc.) with a small 1-5 gallon fuel container?

Therefore, to avoid confusion by the permittees, it is recommended that the draft GP update Part 1.D.4.5 and define a “fueling area” to be a dedicated, stationary location where bulk fuel containers are stored for the purpose of refueling construction vehicles and equipment.

9. Part 1.D.4.6.b of the draft GP states:

“Information regarding waste management, equipment maintenance, and spill prevention shall be prominently posted in the construction trailer.”

This requirement seems to be redundant for the permittees. This information will already be identified in the SWPPP which is required to be kept onsite; and, the draft GP is assuming that every permittee will have a construction trailer onsite at which to prominently post information. It is recommended that Part 1.D.4.6.b be deleted from the draft GP.

10. The recordkeeping requirements in the draft GP needs to be better aligned with current industry practices and available technologies available to the permittees. Part 1.E.3 states:

“During construction, the operator(s) must maintain at the site weekly reports of all inspections conducted in accordance with Part 1.E.2. of the CGP...”

To afford the permittees the use of available technologies for documenting the weekly inspection reports it is recommended that Part 1.E.3 of the draft GP be modified to read:

“During construction, the operator(s) must maintain weekly reports of all inspections conducted in accordance with Part 1.E.2. of the CGP either physically onsite or electronically accessible through your environmental system so that they can be made available at the time of an onsite inspection or upon request by the Department.”;

11. The concept of a “Corrective Action” as a stand-alone requirement is a flawed concept using ambiguous terminology that is confusing to the regulated community. Part I.E.7. “Corrective Actions” is a requirement in the federal Construction General Permit (CGP) and has been added to the draft GP.

The term “Corrective Action”, prior to its inclusion in the federal CGP, is and has long been a broad ranging term that has been used industry-wide to identify anything that needs to be maintained, repaired, installed, reinstalled, removed, or addressed in any way. In essence, if something needed to be fixed it was a “corrective action needed” or when completed, a “completed corrective action”.

The requirement of a “Corrective Action” as it is used in the draft GP, changes the meaning of the term and expects the myriad of permittees, BMP inspectors and practitioners to distinguish the difference between “Repair” and “Replacement” from regular “maintenance”.

Operators/Permittees in other states where the “Corrective Action” is a CGP requirement have commented that most of the industry does not recognize a difference between the “Corrective Action” as it is used in the CGPs, and a routine inspection. Additionally, since there is a lack of understanding of the difference between “repair”, “replacement”, and “maintenance”, a “Corrective Action” as outlined in the respective CGPs are rarely used as the format or process for documenting BMP maintenance, repairs or reinstallations required.

Rather than create and continue to promulgate regulation that is vague and ambiguous and likely not going to be effective, consider excluding the “Corrective Action” requirement from the GP and the requirements moved to other parts of the draft GP where they will be more readily understood and implemented (below).

For example:

Part 1.E.7.1 (a) and Part 1.E.7.1 (b); Address: “A control measure needs repair or replacement;” and “A control measure necessary to comply with the requirements of the CGP was never installed, or was installed incorrectly.” during the weekly site inspections and document actions needed on the inspection report. The weekly inspection schedule is effectively used in other states and provides adequate levels of oversight to maintain BMPs in operational condition. If additional oversight is needed between inspections, create a requirement to maintain a “Interim BMP Maintenance Log” to document maintenance, repair or reinstallation items addressed between inspections.

Part 1.E.7.1 (c) and Part 1.E.7.1 (d); Address: “The discharges are causing an exceedance of applicable water quality standards;” and, “A prohibited discharge has occurred (see Part 1.B.4)”, as incidences of noncompliance and document in accordance with the requirements in Part 1.E.6.4 (e)(ii).

