STATE OF WEST VIRGINIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF WATER AND WASTE MANAGEMENT
601 57th STREET SE
CHARLESTON, WV 25304

FACT SHEET, INFORMATION, AND RATIONALE FOR REVISION OF WEST VIRGINIA/NPDES MULTI-SECTOR GENERAL WATER POLLUTION CONTROL PERMIT NUMBER WV0111457

1. **NAME AND ADDRESS OF APPLICANT**: Any establishment with discharges, composed entirely of stormwater associated with industrial activity, agreeing to be regulated under the terms of this proposed general permit (except as noted herein).

2. **GENERAL WV/NPDES PERMIT NO.:** WV0111457

3. **COUNTY**: Any WV county **RECEIVING STREAM:** Any WV stream

4. **PUBLIC COMMENT PERIOD:** FROM: TO:

The public may participate in the modification process by submitting written comments throughout the public notice period to:

DWWM MSGP
Attention: Sharon Mullins
601 57th ST SE
Charleston, WV 25304
sharon.a.mullins@wv.gov
(304) 926-0499 extension 43808

Please title Comments or Requests for Public Hearing:
MSGP WV0111457

The Director shall consider all comments prior to acting on the proposed permit modification.

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Comments should include the name, address, and telephone number of the writer and a concise statement of the nature of the issues raised. Commenters are asked to list the permit number WV011147 on their comments. Commenters may further participate in the final decision by requesting a public hearing be held for the purpose of addressing the items listed in this fact for change, omission, or addition to the GP. The Director shall hold a public hearing whenever a finding is made, on the basis of requests, that there is a significant degree of public interest on issues relevant to the proposed permit.

If information received during the public comment period appears to raise substantial new questions, the Director may reopen the public comment period.

The draft permit and Fact Sheet may be reviewed at: (insert web address), or, may be inspected, by appointment, at the Division of Water and Waste Management Public Information Office, at 601 57th Street SE, Charleston, WV, between 8:30 a.m. and 4:30 p.m. on business days.

Copies of the proposed permit and Fact Sheet or further information may be obtained upon request to Sharon Mullins whose contact information is listed above. Individuals requiring Telecommunication Device (TDD) may contact our agency by calling (304) 926-0493. Calls must be made 8:30 a.m. to 4:30 p.m. Monday through Friday.

5. BACKGROUND

The West Virginia Multi-Sector Stormwater General Permit (GP) for Industrial Activities is intended to cover stormwater discharges to waters of the State from a wide variety of industrial activities and is derived from, and based in large part upon, the Final National Pollutant Discharge Elimination System (NPDES) Multi-Sector Stormwater General Permit For Industrial Activities as promulgated by the Environmental Protection Agency (EPA) in Federal Register Volume 80 No. 115, Tuesday June 16, 2015 / Notices (the "Federal Multi-Sector Permit" or FMSP).

6. PURPOSE OF PROPOSED REVISION

The Division of Water and Waste Management (DWWM) is proposing to modify the GP in response to Order Number 19-13-EQB issued by the West Virginia Environmental Quality Board. A copy of the Order is found at the end of this Fact Sheet. The Order addressed four items for modification in the GP:

1. Change the wording for the Water Quality Standards section;
2. Include a list of Allowable Non-Stormwater Discharges;
3. Change the benchmark monitoring frequency from 1/3 months to Quarterly and;
4. Clarify that two consecutive exceedances of benchmarks does not obligate a permittee to apply for an individual NPDES permit; rather it requires the permittee to modify its Stormwater Pollution Prevention Plan.

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7. EPA's ROLE IN THE NPDES PROGRAM

The NPDES program is authorized by the federal Clean Water Act and the EPA has responsibility for oversight of its implementation in states authorized to implement it. West Virginia is authorized to administer the NPDES program on behalf of the EPA; therefore, permitting, inspections, and enforcement actions are subject to EPA review.

The draft modification of the GP, as written to satisfy Order Number 19-13-EQB, was referred to EPA prior to proceeding to the public notice stage of the modification process. Input from EPA was received and incorporated into the draft modified permit. With the exception of the language in the Water Quality Standards section that did not comply with WV state regulations, EPA did not notify DWWM of concerns about the issues in the Order from the EQB, therefore the draft modified permit includes the remaining changes and clarifications.

8. TYPES OF DISCHARGES COVERED

The modified permit primarily relies on EPA's definition of "stormwater discharges associated with industrial activity" defined in its Multi-Sector General Permit (MSGP). The industrial categories have been grouped into the appropriate Standard Industrial Classification (SIC) Sectors based upon similarities in the nature of the industrial activity, the type of materials handled, and material management practices employed. The draft modified GP also covers stormwater discharges associated with industrial activity from those industries which will not be, or are currently not, covered under sectors A through V. Sector W addresses these other industrial discharges. Refer to the draft modified permit, Section A, for the types of discharges covered under each sector.

9. TYPES OF DISCHARGES NOT COVERED

The DWWM intends to regulate pollutants in stormwater discharges associated with industrial activity listed below through permits other than this GP (WV0111457). For example, listed dischargers that are subject to Effluent Limitation Guidelines are authorized to discharge stormwater under individual WV/NPDES permits. There are a total of four (4) GPs used by DWWM to address stormwater only, and examples of GPs that address other stormwater discharges include number WV0115924 for discharges associated with construction activities and number WV0116815 for discharges associated with oil and gas construction related activities.

The DWWM's goal is to permit stormwater discharges under the most appropriate permit.

Cement Manufacturing (40 CFR Part 411)
Feedlots (40 CFR Part 412)
Fertilizer Manufacturing (40 CFR Part 418)
Petroleum Refining (40 CFR Part 419)

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Phosphate Manufacturing (40 CFR Part 422)
Steam Electric (40 CFR Part 423)
Coal Mining (40 CFR Part 434)
Mineral Mining and Processing (40 CFR Part 436)
Ore Mining and Dressing (40 CFR Part 440)
Oil and Gas Extraction (SIC Major Group 13)
Publicly Owned Treatment Works (SIC 4952)
Landfills (SIC 4953)
Sewage Sludge Land Application Sites (SIC 4953)
Discharges Associated with Construction Activities (SIC 1629)
Wood Preserving Facilities (SIC 2491)
Hazardous Waste Treatment, Storage or Disposal Facilities (SIC 4953)
Leather Tanning or Finishing (SIC 3111)
Water Transportation Facilities (SIC 4412-4499)
Ship and Boat Building or Repairing (SIC 3731)
*Primary Metals (SIC 33)

*Primary Metals facilities are eligible for coverage under this GP (under Sector R), if the facility is providing pretreatment for the industrial wastes, in accordance with 47 CSR Part 10.14 and is transferring the wastes to a POTW which has been granted the proper permit or authority to accept such wastes and the facility has a discharge composed entirely of stormwater.

10. MONITORING REQUIREMENTS

The modified GP requires analytical monitoring of stormwater specific to the discharges from classes of industrial facilities. Monitoring is required for the industry sectors or subsectors that demonstrate a potential to discharge pollutants at concentrations or levels of concern that could be harmful to water quality. These levels are called benchmarks.

The level of concern is a concentration at which a stormwater discharge could potentially impair, or contribute to impairing, water quality or affect human health from ingestion of water or fish. DWWM also views the benchmarks as a level that, if below, a facility would represent little potential for water quality concern. As such, the benchmarks also provide an appropriate level to determine whether a facility's stormwater pollution prevention measures are being successfully implemented. The benchmark concentrations are not effluent limitations and should not be interpreted or construed as such. These values are levels which the DWWM is using to determine if a stormwater discharge from any given facility merits further scrutiny to ensure that the facility has been successful in implementing the Stormwater Pollution Prevention Plan (SWPPP) contained in the application that was approved for permit coverage. As such, benchmark levels represent a target concentration for a facility to achieve through implementation of pollution prevention measures at the facility.

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The following table lists the parameter benchmark values and provides a reference to the Source for the monitoring concentrations.

Parameter Benchmark Values
West Virginia

Parameter Name	Benchmark Monitoring Concentrations	Source*
Biochemical Oxygen Demand (5)	30 mg/l	4
Chemical Oxygen Demand	120 mg/l	5
Total Suspended Solids	100 mg/l	14
Oil and Grease	15 mg/l	8
Nitrate+Nitrite Nitrogen	0.68 mg/l	7
Total Phosphorus	2.0 mg/l	6
PH	6.0-9.0 s.u.	14
Acrylonitrile (c)	7.55 mg/l	2
Aluminum, Total (pH 6.5-9)	0.75 mg/l	1
Ammonia	4 mg/l	14
Antimony, Total	0.636 mg/l	9
Arsenic, Total (c)	0.16854 mg/l	9
Benzene	0.01 mg/l	10
Beryllium, Total (c)	0.13 mg/l	2
Butyl benzyl Phthalate	3 mg/l	3
Cadmium, Total (H)	0.0159 mg/l	9
Copper, Total(H)	0.0636 mg/l	1
Chloride	860 mg/l	1
Dimethyl Phthalate	1.0 mg/l	11
Fluoranthene	0.042 mg/l	3
Fluoride	1.8 mg/l	6
Iron, Total Recoverable	1.5 mg/l	12

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Parameter Name	Benchmark Monitoring Concentrations	Source*
Lead, Total (H)	0.0816 mg/l	1
Manganese	0.0636 mg/l	13
Mercury, Total	0.0024 mg/l	1
Nickel, Total (H)	1.417 mg/l	1
PCB-1016(c)	0.000127 mg/l	9
PCB-1221(c)	0.10 mg/l	10
PCB-1232(c)	0.000318 mg/l	9
PCB-1242(c)	0.00020 mg/l	10
PCB-1248(c)	0.002544 mg/l	9
PCB-1254(c)	0.10 mg/l	10
PCB-1260(c)	0.000477 mg/l	9
Phenols, Total	1.0 mg/l	11
Pyrene (PAH.c)	0.01 mg/l	10
Selenium, Total	0.2385 mg/l	9
Silver, Total (H)	0.0318 mg/l	9
Trichloroethylene (c)	0.0027 mg/l	3
Zinc, Total (H)	0.117 mg/l	1

(*) Sources

1. "EPA Recommended Ambient Water Quality Criteria." Acute Aquatic Life Freshwater
2. "EPA Recommended Ambient Water Quality Criteria." LOEL Acute Freshwater
3. "EPA Recommended Ambient Water Quality Criteria." Human Health Criteria for Consumption of Water and Organisms
4. Secondary Treatment Regulations (40 CFR 133)
5. Factor of 4 times BOD5 concentration - Benchmark
6. North Carolina stormwater benchmark derived from NC Water Quality Standards
7. National Urban Runoff Program (NURP) median concentration
8. Median concentration of Stormwater Effluent Limitation Guideline (40 CFR Part 419)
9. Minimum Level (ML) based upon highest Method Detection Limit (MDL) times a factor of 3.18
10. Laboratory derived Minimum Level (ML)
11. Discharge limitations and compliance data
12. WV State water quality standards.

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13. Colorado - Chronic Aquatic Life Freshwater - Water Quality Criteria
14. Final 1995 MSGP Federal Register Notice, which was used for the Baseline GP.

Notes:

(c) carcinogen
(H) hardness dependent
(PAH) Polynuclear Aromatic Hydrocarbon

The benchmarks for total recoverable lead for all sampling are proposed at 0.0816 mg/l, 0.117 for total recoverable zinc, and 0.0636 for total recoverable copper. These samples are hardness dependent, and DWWM used a hardness value of 100 mg/l to determine these values. 100 mg/l is a conservative value of hardness for all waters of the state.

As can be seen here, benchmark concentrations were determined based upon several existing standards or other sources to represent a level above which water quality concerns could arise. The DWWM believes that each of these benchmark values represents a reasonable level below which water quality impacts should not occur and therefore represent a useful level to assess whether a SWPPP is controlling pollution in the stormwater discharges.

Certain industrial discharges are eligible for coverage under the EPA MSGP even though ELGs have been established, therefore this GP also allows these establishments to register for coverage under this GP. The three industrial sectors are:

- Sector H for stormwater Discharges Associated with Industrial Activity from Vehicle Maintenance Areas, Equipment Cleaning Areas, or Deicing Areas Located at Air Transportation Facilities, when the permittee opts to monitor for urea rather than submit an annual certification that urea is not used for deicing;
- Agriculture Chemicals for SIC 2874;
- Asphalt Paving and Roofing Materials Manufacturing Facilities for SIC 2911.

11. NPDES Permitting Process

Beginning in 2011, DWWM began processing NPDES permit applications using an online platform, called the Electronic Submission System (ESS). Several factors served as driving forces for the change from paper to electronic processing, not the least of which was the DWWM's focus on public participation. Through a portal called the Public Query, ESS offers everyone the means for viewing NPDES applications deemed Administratively Complete. Hereinafter, this Fact Sheet will refer to the system utilized by DWWM as *ESS*.

12. SIGNIFICANT PROPOSALS FOR MODIFICATION TO WV0111457

A. 19-13-EQB

To satisfy the Order from the Environmental Quality Board, the proposed revisions include:

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1. A listing of non-stormwater discharges, which can be found in Section B.2. of the modified permit - The following non – stormwater discharges are proposed for all sectors provided all discharges comply with the requirements of this permit.
   - Discharges from emergency/unplanned fire-fighting activities.
   - Fire hydrant flushing.
   - Potable water, including waterline flushing.
   - Uncontaminated condensate from air conditioners, coolers/chillers, and other compressors and from the outside storage of refrigerated gasses or liquids.
   - Irrigation drainage.
   - Landscape watering provided all pesticides, herbicides, and fertilizers have been applied in accordance with the approved labeling.
   - Pavement wash waters where no detergents or hazardous cleaning products (e.g., bleach, hydrofluoric acid, muriatic acid, sodium hydroxide, nonylphenols), and the wash waters do not come into contact with oil and grease deposits, sources of pollutants associated with industrial activities, or any other toxic or hazardous materials, unless residues are first cleaned up using dry clean-up methods (e.g., applying absorbent materials and sweeping, using hydrophobic mops/rags) and you have implemented appropriate control measures to minimize discharges of mobilized solids and other pollutants (e.g., filtration, detention; settlement).
   - Uncontaminated ground water or spring water.
   - Foundation or footing drains where flows are not contaminated with process materials.
   - Incidental windblown mist from cooling towers that collects on rooftops or adjacent portions of your facility, but not intentional discharges from the cooling tower (e.g., piped cooling tower blowdown; drains.

2. Frequency for sampling of stormwater discharges is to change from 1/3 months to quarterly. The intent is that sampling would be done once during each calendar quarter (January through March, April through June, July through September, and October through December) if there is a qualifying storm event, with reports of the results of sampling events due by the 25th day of the month following the quarter in which sampling occurred. The change can be found in each sector table displaying the parameters to be tested, which are contained in Section A.1.

3. The modified GP now explains that two consecutive exceedances of benchmarks do not obligate a permittee to apply for an individual NPDES permit; rather, the permittee is required to modify its Stormwater Pollution Prevention Plan. Section B.6. of the draft permit makes this clarification.

4. The final requirement of the Order is to change the language in the Water Quality Standards section. The Order's language is:

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This discharge shall not cause or materially contribute to: distinctly visible floating or settable solids, suspended solids, scum, foam or oily slicks; deposits or sludge bank on the bottom; odors in the vicinity of the waters; taste or odor that would adversely affect the designated uses of the affected waters; distinctly visible color which may impair or interfere with the designated uses of the affected waters; and shall not cause a fish or mussel kill. The limitations and conditions in this permit for the discharges identified in this permit are limitations and conditions that are necessary to meet applicable West Virginia water quality standards, Requirements Governing Water Quality Standards 47 CSR 2.

See the next item in this Fact Sheet for more on this requirement from 19-13-EQB.

B. EPA Recommendation

EPA recommended that language in the Water Quality Standards section, found in Section B.11, be reworded as stated here, which differs from the ordered language:

The discharge shall not cause or materially contribute to distinctly visible floating or settable solids, suspended solids, scum, foam or oily slicks; deposits or sludge bank on the bottom; odors in the vicinity of the waters; taste or odor that would adversely affect the designated uses of the affected waters; materials in concentrations which are harmful, hazardous or toxic to man, animal or aquatic life, distinctly visible color, algae blooms or concentrations of bacteria which may impair or interfere with the designated uses of the affected waters, requiring an unreasonable degree of treatment for the production of potable water by modern water treatment processes as are commonly employed and any other condition, including radiological exposure which adversely alters the integrity of the waters of the state; and shall not cause a fish or mussel kill. The limitations and conditions in this permit for the discharges identified in this permit are limitations and conditions that are necessary to meet applicable West Virginia water quality standards, Requirements Governing Water Quality Standards 47 CSR 2.

Since the language ordered by the EQB differed with that provided by the EPA, a decision on which version to propose in the draft modified permit had to be made by DWWM. The language proposed by EPA was taken wholly from section 47-2-3 of the Requirements Governing Water Quality Standards, whereas the language from the EQB Settlement Agreement only contained a portion of the language from the WV regulation. For this reason, the DWWM agrees to the language EPA recommends for revising the Water Quality Standards section of the draft permit.

C. Retaining or Obtaining Coverage Under this Permit

This portion of the draft permit states that applications for coverage are to be submitted through ESS. Applications that must be made available for public notice and comment are to include a Statement for Billing. West Virginia's Code of State Regulations (CSR) 47-10 requires permit applicants to bear the cost for public notice and comment and require the applicant to place an ad in a newspaper with the largest readership in the area of the facility. Many newspapers will not publish the ad without assurance for payment and the Statement for Billing serves as that assurance.

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For facilities with existing coverage under the previous GP, once this modified GP is issued, DWWM intends to use a simplified form called the Renewal Certification Document. The form will be available in ESS and its use is limited to registrations approved from April 12, 2019 through the effective date of the modified GP. An application fee will not be charged for this application type. No modifications to registrations will be approved through the Renewal Certification Documents. DWWM's goal with the Renewal Certification Document is to provide an opportunity for existing permittees that wish to renew their coverage under the modified GP to continue coverage with the least disruption possible, provided the permittees agree to abide by the terms and conditions of the modified GP. Qualified permittees are urged to review the option carefully because there is a deadline for applying, which is ninety (90) days from the effective date of the modified GP.

Many registrations are currently expired. The deadline for renewing coverage under the current 2019 GP was April 12, 2020. Language in the modified GP explains to facilities with expired registrations that a complete, new application is required and, until the new application is approved, those facilities are considered to be operating without a permit. DWWM encourages those facilities with expired registrations to submit a new application as soon as possible after the effective date of this modified GP.

There are some reissuance applications under the current 2019 GP that DWWM is still processing. Most of the applications in this category have been reviewed and DWWM has asked for additional information or corrections to the applications. DWWM will notify these applicants to comply with the terms and conditions of the modified GP once it is finalized. Those who do so within a reasonable timeframe will be processed and recalcitrant permittees will need to file a completely new application.

DWWM has very limited human resources for reviewing applications for coverage under this modified GP. Permittees who allow their coverage to lapse create an unmanageable workload since it's impossible to predict the number of applications to process at any given time. The busiest time should be for several months following deadlines for renewing coverage. DWWM could possibly shift its human resources for the months where the load is at its peak, but late applications are the bane of planning.

The section of the draft permit containing terms and conditions defines major modifications to approved registrations. It also informs permittees of the public notice requirements for major modification applications. Major modifications include adding new outlets, applying to discharge to streams not listed in the original application, and to add or change Sector/SIC Codes, such as when a manufacturing plant adds a new product line.

D. Public Notice and Comment Requirements

Public noticing of applications for authorization to discharge under the GP for the very first time is not a new requirement. What previous GPs failed to do was clearly call out other times when public participation was required or appropriate.

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Primarily to engage the public in the process of meeting Anti-Degradation requirements, the GP traditionally required public notice for the initial application for a facility. The draft modified GP continues the opportunity for renewing coverage to existing permittees without public notice, provided there are no changes at their facilities that could alter the quality of their stormwater discharges as currently permitted. The logic to this tradition is there's nothing new going on to announce to the public. Renewing this type of coverage is not subject to public notice, provided a complete application is made by the due date given in the permit.

Reissuance applications that contain requests for major modification to existing coverages will be subject to public notice. An example of an application of this type is a proposal to add an outlet during the renewal process.

E. Continuation of this GP and Continuing Coverage

Items 2 and 4 in this section are combined in the draft modified permit, since both address termination of coverage. Also, language was added to let permittees know to submit notices of termination through ESS when seeking an end to coverage. Termination is not complete until approved by the Director.

F. Permit Organization

As a state authorized to administer NPDES on behalf of the EPA, DWWM designs its own GP. Section A informs permittees about the stormwater monitoring requirements for the industrial activities eligible for coverage and Section B contains other requirements including SWPPP elements. Not all permits are set up this way, including the EPA MSGP.

An EPA recommendation to spell out SWPPP requirements for all industrial sectors was considered, but DWWM ultimately chose to keep its GP's traditional format. DWWM is willing to work with EPA and industry to develop sector-specific SWPPP requirements, but with its limited resources, DWWM views this as a long-term project. However, DWWM agrees with the EPA that permittees need to know of their obligations beyond monitoring. For this reason, references to Section B requirements have been described in Section A.

Furthermore, several permit terms in the past, DWWM made the decision to review every SWPPP to look for site-specific pollution controls. The reviews give DWWM the opportunity to look at the viability of the measures while giving applicants the flexibility to propose controls they purport to be the most suitable for their own sites.

This modified GP groups the three categories of industrial discharges with applicable effluent limitation guidelines (ELGs). Section A.2 contains the monitoring requirements for Agricultural Chemicals, SIC Code 2874; Asphalt Paving and Roofing Materials Manufacturing Facilities and SIC code 2911 consistent with the federal requirements.

Total phosphorus has been added to the monitoring requirements for SIC Code 2874, based on the ELG.

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Monitoring requirements for new and existing airports subject to an ELG rather than benchmark concentrations was also moved to Section A.2.

G. Update to Standard Industrial Classifications

The draft modified GP offers better classification of stormwater discharges by being more specific in listing Standard Industrial Classification Major Groups, Groups Numbers, and Codes.

H. Sector W Coverage Must Be Requested

Sector W is used to provide permit coverage for facilities designated by WVDEP as needing a stormwater permit, and any discharges of stormwater associated with industrial activity that do not meet the description of an industrial activity covered by Sectors A-V. Because this sector is primarily intended for use by discharges designated by the WVDEP as needing a stormwater permit (which is an atypical circumstance), and your facility may or may not normally be discharging stormwater associated with industrial activity, you must obtain the Director's written permission to use this sector prior to submitting an application. WVDEP will establish any additional monitoring and reporting requirements for your facility prior to authorizing you to be covered by this permit. Additional monitoring requirements would be based on the nature of activities at your facility and your stormwater discharges.

I. Releases in excess of Reportable Quantities

The release of hazardous substances in stormwater discharges is prohibited. Previously, the GP stated that the discharge of such substances was to be in accordance with the SWPPP. This change is proposed since the SWPPP must be designed to control pollutants, and hazardous substances should not be in the stormwater.

J. Maintaining Low Concentration Waivers at Reissuance

Section B.4. explains that permittees may obtain waivers for benchmark sampling requirements after four consecutive sample results are averaged and come in lower than the benchmark concentration level. Instead of sampling for the remainder of the permit term, permittees have the option to certify annually that nothing at the facility changed that could affect the quality of the stormwater discharge.

At reissuance, DWWM conducts a review of the SWPPP contained in the application. The SWPPP cannot contain changes to the conditions at the facility that would affect eligibility for the waiver. DWWM then requires a confirmation sample, and, provided the report of the analysis supports the veracity of the application (that nothing changed at the site), the waiver is re-authorized.

K. Section B.6.a. - Corrective Actions

As the EQB Order clarified, applying for an individual permit is only required after a permittee takes action to evaluate the SWPPP and make changes to meet benchmarks but still can't stay

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under them. DWWM recognized the concern presented in the order and that was the huge gap between a first, second, even a third time benchmark exceedance and that of facing the possibility of having to obtain an individual NPDES permit. This new subsection assists permittees with timelines and specific steps for corrective actions, based on benchmark exceedances.

With major input from EPA, and consistent with the MSGP, the modified GP notifies permittees of a pathway toward compliance and its goal is to help them remain eligible for coverage under the GP. Subsection B.6.a contains the steps for a permittee to take to maintain compliance from the first exceedance all the way to the point when an individual permit is absolutely the only option for discharging lawfully.

L. Section B.7.a. Conditions Requiring SWPPP Review

To further illustrate its efforts to comply with 19-13-EQB, DWWM provides, in this section of draft modified GP, clear language telling permittees when SWPPP review and revision must be done.

When a spill, leak, or unauthorized discharge of non-stormwater discharge occurs; when a discharges exceeds a benchmark; when control measures are not sufficient to meet the applicable water quality standards or non-numeric effluent limits; or when a required control was not installed, installed incorrectly, or not in compliance with permit terms, or is not being properly operated or maintained, the SWPPP must be reviewed and if appropriate, must also be revised.

M. Removal of Section B.9. Alternative Certification

This certification was written into previously issued permits to provide the option for a No Exposure certification on an outlet basis. The option was not put in to practice and, upon close examination echoes the benefits of Low Concentration Waivers. Furthermore, it's not a procedure EPA endorses, so Alternative Certifications is proposed to be removed from the modified GP.

N. Antidegradation Requirements

The current GP does not provide the appropriate conditions for new discharges to adequately protect Tier 3 Waters; therefore they cannot be authorized by coverage under the GP. In the modified GP, language in the Antidegradation Requirements, Section B.12 was revised to say that any new facility is not eligible for coverage under this permit for discharges to waters designated as Tier 3. An individual permit is required for stormwater discharges from new facilities into Tier 3 waters.

This portion of the proposed modified GP explains DWWM's approach to protecting non-Tier 3 waters as well. Applications for new facilities and new discharges from existing facilities are subject to public notice and comment. Also, all facilities' SWPPPs must include site-specific pollution prevention measures and controls, and all receive DWWM review prior to approval to discharge. The proposed change for the modified GP is the explanation that major modifications, including new discharges from existing facilities, will be subject to public notice and comment.

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To be clear about new discharges from existing facilities: if the new discharge is proposed for a Tier 3 stream, an individual permit is required.

Based on a review of SWPPP requirements in Section B.17., DWWM proposed to remove the paragraph below from the GP because it conflicts with Section N of this Fact Sheet. Section N requires site-specific SWPPPs and the paragraph below suggests generic SWPPPs would be acceptable. Instead of having the paragraph below in the permit, it is being explained here instead. If a sector-specific SWPPP is proposed to the Director, the matter will be taken into consideration at the time. In other words, the concept of a sector-specific generic SWPPP doesn't fit with DWWM's anti-degradation strategy, but the permit won't specifically prohibit sector-specific SWPPPs altogether. Much work would be necessary to develop sector-specific generic SWPPPs that could be classified as meeting antidegradation standards, and as stated earlier in this Fact Sheet, DWWM is open to the possibility considering its limited resources.

"If representative organization of a significant number of facilities in a particular SIC code can develop and demonstrate an acceptable SWPPP and GPP template, the Director will review this approach for considering those facilities for coverage under this GP and in compliance with this section."

O. Section B.13. TMDL and CWA Section 303(d) Impaired Waters Requirements

DWWM maintains a list of approved TMDLs on its website. Interested parties can find reports, lists, and the integrated report by visiting:

https://dep.wv.gov/WWE/watershed/wir_reports/Pages/water_reports.aspx

Also, DWWM verifies the classification of receiving waters when reviewing applications for GP coverage.

P. Endangered and Threatened Species Requirements

EPA recommended adding to this section and DWWM agreed. "The permittee shall perform an investigation to determine whether their discharge will impact any endangered and/or threatened species, including critical habitat."

Q. Reopener Clause

If there is evidence indicating potential or realized impacts on water quality due to any stormwater discharge associated with industrial activity covered by this permit, the owner or operator of such discharge may be required to obtain an individual permit in accordance with Section B.1. of this permit or the permit registration may be modified. If a modification is needed, the permittee must apply for a modification using the proper permit registration modification form which may be subject to public notice. A public notice is required if the modification makes major changes to a site such as adding a new outfall. When modified, the permit registration may include different benchmarks and/or requirements.

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R. SWPPP Modifications

This new section, B.17.B. explains when it's necessary to modify the SWPPP.

Construction or a change in design, operation, or maintenance at the facility that significantly changes the nature of pollutants discharged in stormwater from the facility, or significantly increases the quantity of pollutants discharged.

The SWPPP shall also be modified in accordance with section B.6.

S. Liabilities

In addition to 14.a), 14.b), and 14.c) of Appendix A of the permit, the authority provided by Clean Water Act section 309, which sets out enforcement criteria and penalties for violations of the Act, and 40 CFR Part 19, which provides for the adjustment of civil monetary penalties for inflation, are applicable to violations of this permit.

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WEST VIRGINIA ENVIRONMENTAL QUALITY BOARD
CHARLESTON, WEST VIRGINIA

WEST VIRGINIA BUILDERS SUPPLY ASSOCIATION,

Appellant,

v.

Appeal No. 19-13-EQB

DIRECTOR, DIVISIONS OF WATER AND WASTE MANAGEMENT, WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION,

Appellee.

ORDER APPROVING PROPOSED ORDER RESOLVING APPEAL

On January 10, 2020, Appellant West Virginia Builders Supply Association ("Appellant") and Appellee West Virginia Department of Environmental Protection ("WVDEP") submitted to the Environmental Quality Board (the "Board") for consideration a proposed Order Resolving Appeal encompassing the issues raised in Appellant's Notice of Appeal dated October 11, 2019. (See attached Proposed Order Resolving Appeal).

Upon review of the documents and pleadings in this matter, the Board concludes that the agreements set forth in the proposed Order Resolving Appeal are reasonable and therefore approves of the agreements. The Board directs that WV/NPDES Permit No. WV0111457 ("the Permit") be revised in the manner described in the Order Resolving Appeal, with the revisions to be considered conditions of the Permit from the effective date of the Permit.

The Board takes such action in accordance with W. Va. Code R. § 46-4-5.2, in that the Board may, in its administrative discretion, and in the interests of fairness and justice, rule on

R. SWPPP Modifications

This new section, B.17.B. explains when it's necessary to modify the SWPPP.

Construction or a change in design, operation, or maintenance at the facility that significantly changes the nature of pollutants discharged in stormwater from the facility, or significantly increases the quantity of pollutants discharged.

The SWPPP shall also be modified in accordance with section B.6.

S. Liabilities

In addition to 14.a), 14.b), and 14.c) of Appendix A of the permit, the authority provided by Clean Water Act section 309, which sets out enforcement criteria and penalties for violations of the Act, and 40 CFR Part 19, which provides for the adjustment of civil monetary penalties for inflation, are applicable to violations of this permit.

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motions which tend to regulate the course of hearing, simplify the issues, and dispose of procedural requests or similar matters.

Please note the Board did take into consideration the sampling for compliance concerns raised by Jefferson County Foundation ("JCF") *et al.*, in JCF's Motion to Intervene that was received by the Board on December 5, 2019.

The Board dismisses the appeal from the docket.

ORDERED and **ENTERED** this 30th day of January, 2020.

Jessie D. Schultz
for Edward M. Snyder, Chairman
Environmental Quality Board

ED_005154_00000003-00018

West Virginia Environmental Quality Board
Charleston, West Virginia

West Virginia Building Supply Association,

Appellant,

v.

Appeal No. 19-13-EQB

Director, Division of Water and Waste Management, West Virginia Department of Environmental Protection,

Appellee.

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ENVIRONMENTAL QUALITY BOARD
AIR QUALITY BOARD

Order Resolving Appeal

On October 11, 2019, Appellant West Virginia Building Supply Association ("WVBSA") filed a Notice of Appeal challenging certain conditions of WV/NPDES Permit No. WV0111457 ("the Permit"), issued by Appellee ("DEP") on September 12, 2019 and effective October 12, 2019. The WVBSA and the DEP have conferred and have reached agreement on all issues raised in the WVBSA's Notice of Appeal, as set forth below:

Item 1: The text in Section B.13 of the Permit should be deleted, and replaced with the following:

13. Water Quality Standards

This discharge shall not cause or materially contribute to: distinctly visible floating or settable solids, suspended solids, scum, foam or oily slicks; deposits or sludge bank on the bottom; odors in the vicinity of the waters; taste or odor that would adversely affect the designated uses of the affected waters; distinctly visible color which may impair or interfere with the designated uses of the affected waters; and shall not cause a fish or mussel kill. The limitations and conditions in this permit for the discharges identified in this permit are limitations and conditions that are necessary to meet applicable West Virginia water quality standards, Requirements Governing Water Quality Standards 47 CSR 2.

Item 2: The text in Section B.2 of the permit should be deleted, and replaced with the following:

2. Allowable Non-Stormwater Discharges for all Sectors of Industrial Activity:

The following are non-stormwater discharges that are authorized under this permit for all sectors provided that all discharges comply with the requirements of this Permit:

- Discharges from emergency/unplanned fire-fighting activities;

- Fire hydrant flushings;

- Potable water, including water line flushings;

- Uncontaminated condensate from air conditioners, coolers/chillers, and other compressors and from the outside storage of refrigerated gases or liquids;

- Irrigation drainage;

- Landscape watering provided all pesticides, herbicides, and fertilizers have been applied in accordance with the approved labeling;

- Pavement wash waters where no detergents or hazardous cleaning products are used (e.g., bleach, hydrofluoric acid, muriatic acid, sodium hydroxide, nonylphenols), and the wash waters do not come into contact with oil and grease deposits, sources of pollutants associated with industrial activities, or any other toxic or hazardous materials, unless residues are first cleaned up using dry clean-up methods (e.g., applying absorbent materials and sweeping, using hydrophobic mops/rags) and you have implemented appropriate control measures to minimize discharges of mobilized solids and other pollutants (e.g., filtration, detention; settlement);

- Routine external building washdown/power wash water that does not use detergents or hazardous cleaning products (e.g., those containing bleach, hydrofluoric acid, muriatic acid, sodium hydroxide, nonylphenols);

- Uncontaminated ground water or spring water;

- Foundation or footing drains where flows are not contaminated with process materials; and

- Incidental windblown mist from cooling towers that collects on rooftops or adjacent portions of your facility, but not intentional discharges from the cooling tower (e.g., "piped" cooling tower blowdown; drains).

Item 3: The parties agree that the period during which sampling for compliance with benchmarks is conducted should be changed, throughout the permit, from "1/3 Months" to "Quarterly". The intent of the parties is that sampling would be done once during each calendar quarter (January through March, April through June, July through September and October through December) if

there is a qualifying storm event, with reports of the results of sampling events due by the 25th day of the month following the quarter in which sampling occurred.

Items 4: The parties agree that the DEP's Response to Comments (Response 20) did not imply that two consecutive exceedances of benchmarks obligates a permittee to apply for an individual NPDES permit. If the average of two consecutive samples is above the benchmark level for a sample parameter a permittee is obligated to modify its Stormwater Pollution Prevention Plan, as provided in Section B.6 of the Permit.

The Board, having considered the agreements of the parties, and concluding that they are reasonable, adopts those agreements as its own and ORDERS that the Permit be revised in the manner described herein, with the revisions to be considered conditions of the Permit from the effective date of the Permit, and dismisses the appeal.

Entered this _____ day of January, 2020.

Dr. Edward Snyder, Chairman

Prepared by:

David L. Yeusey, Esq. (WV Bar # 4136)
Spilman Thomas & Battle, PLLC
300 Kanawha Blvd., E. (PO Box 273)
Charleston, WV 25301 (25321)
304-340-3829

Inspected by:

C. Scott Driver, Esq.
Office of Legal Services
West Virginia Department of Environmental Protection
601 57th Street, SE
Charleston, WV 25304

ED_005154_00000003-00021

West Virginia Environmental Quality Board
Charleston, West Virginia

West Virginia Building Supply Association,

Appellant,

v.

Appeal No. 19-13-EQB

Director, Division of Water and Waste Management,
West Virginia Department of Environmental
Protection,

Appellee.

CERTIFICATE OF SERVICE

I, David Yaussy, counsel for West Virginia Building Supply Association, do hereby certify that I have filed an original and six copies of the foregoing proposed Order Resolving Appeal with the Environmental Quality Board at 601 57th Street, S.E., Charleston, WV 25304, and have served true and exact copies of the same upon counsel for the Appellee by first class mail on January 6, 2020, to the following:

C. Scott Driver, Esq.
Office of Legal Services
West Virginia Department of Environmental Protection
601 57th Street, SE
Charleston, WV 25304

David L. Yaussy (WV Bar #4156)

WEST VIRGINIA ENVIRONMENTAL QUALITY BOARD
CHARLESTON, WEST VIRGINIA

WEST VIRGINIA BUILDERS SUPPLY ASSOCIATION,

Appellant,

v.

Appeal No. 19-13-EQB

DIRECTOR, DIVISIONS OF WATER AND WASTE MANAGEMENT, WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION,

Appellee.

ORDER DENYING MOTION TO INTERVENE AS BEING MOOT

On December 4, 2019, Jefferson County Foundation ("JCF") and others filed a motion to intervene in the above-styled appeal. On January 10, 2020, Appellant West Virginia Builders Supply Association ("Appellant") and Appellee West Virginia Department of Environmental Protection ("WVDEP") submitted to the Environmental Quality Board (the "Board") for consideration a proposed Order Resolving Appeal encompassing the issues raised in Appellant's Notice of Appeal dated October 11, 2019. The Board has approved of the agreements set forth in the proposed Order Resolving Appeal and has directed that WV/NPDES Permit No. WV0111457 ("the Permit") be revised in the manner described in the Order Resolving Appeal, with the revisions to be considered conditions of the Permit from the effective date of the Permit. (See attached Order Resolving Appeal).

Accordingly, the Board considers JCF's effort to intervene in this appeal moot, and therefore JCF's Motion to Intervene is denied.

The Board takes such action in accordance with W. Va. Code R. § 46-4-5.2, in that the Board may, in its administrative discretion, and in the interests of fairness and justice, rule on motions which tend to regulate the course of hearing, simplify the issues, and dispose of procedural requests or similar matters.

ORDERED and **ENTERED** this 30th day of January, 2020.

for Jackie D. Shultz
Edward M. Snyder, Chairman
Environmental Quality Board

ENVIRONMENTAL QUALITY BOARD

BUILDERS SUPPLY ASSOCIATION
OF WEST VIRGINIA,

Appellant,

v.

Appeal No. 19-13-EQB

DIRECTOR, DIVISION OF WATER
AND WASTE MANAGEMENT, WEST
VIRGINIA DEPARTMENT OF
ENVIRONMENTAL PROTECTION,

Appellee.

CERTIFICATE OF SERVICE

I hereby certify that I, Jackie D. Shultz, Clerk for the Environmental Quality Board, have this day, the 30th day of January, 2020, served a true copy of the foregoing Order Approving Proposed Order Resolving Appeal and Order Denying Motion To Intervene As Being Moot via certified U.S. first class mail or hand delivery to the following:

via certified U.S. Mail:

David L. Yaussy, Esquire
Spilman Thomas & Battle, PLLC
300 Kanawha Blvd, E.
Charleston, WV 25301

Certified Mail: 9489 0090 0027 6201 3799 58

Christopher P. Strouch, Esquire
Arnold & Bailey, PLLC
208 N. George Street
Charles Town, WV 25414

Certified Mail: 9489 0090 0027 6201 3799 65

via personal service:

Charles S. Driver, Esquire
Office of Legal Services
WV Department of Environmental Protection
601 57th Street, S.E.
Charleston, WV 25304

Katheryn Emery, P.E., Acting Director
Division of Water and Waste Management
WV Department of Environmental Protection
601 57th Street, S.E.
Charleston, WV 25304

Jackie D. Shultz
Jackie D. Shultz, Clerk