Message

From: Price-Fay, Michelle [Price-Fay.Michelle@epa.gov]
Sent: 8/18/2020 4:34:07 PM
To: Patel, Yogesh P [Yogesh.P.Patel@wv.gov]; Martinsen, Jessica [Martinsen.Jessica@epa.gov]; Lazos.Pamela@epa.net; Driver, Charles S [Charles.S.Driver@wv.gov]; Ottinger, Elizabeth [Ottinger.Elizabeth@epa.gov]; Gable, Kelly [Gable.Kelly@epa.gov]
Subject: RE: individual permit application for Berkley County PSSD

Hello Yogesh,

It is probably best to us to have a conversation with all of the folks copied on this email, and anyone else that would benefit from the conversation, then to go back and forth via email as I am sure that we do not want to include enforcement confidential information that may be required to be released via request from a FOIA. So I leave it to WVDEP to request this meeting and will coordinate with our enforcement folks.

From my perspective, EPA doesn't have a "want" on the permitting side. We are responding to the questions posed to us and WVDEP is authorized to make the decision on the appropriate permit tool, GP or an IP for this given situation. Because I see and I issue the overwhelming majority of the comments provided by EPA to all states in all sectors, including those provided to WVDEP I did want to weigh in on the comments providing with respect to anti-backsliding. Over the last year, EPA has not provided a lot of comments with respect to anti-backsliding. The comments made on draft permits and fact sheet are appropriate based upon the draft permits and fact sheets that we have received as per the federal regulations and MOA. These are not "a lot of comments" but merely comments to address the potential where it may exist or be suggested in draft documents prior to advancing those drafts to draft final permits and fact sheets.

We have a call schedule for this afternoon and we can discuss further if need or a separate focused conversation can be schedule.

Sincerely,
Michelle

Michelle Price-Fay, Chief
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Water Division (3WD40)
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215-814-3397

From: Patel, Yogesh P [mailto:Yogesh.P.Patel@wv.gov]
Sent: Tuesday, August 18, 2020 9:22 AM
To: Martinsen, Jessica <Martinsen.Jessica@epa.gov>; Lazos.Pamela@epa.net; Driver, Charles S <Charles.S.Driver@wv.gov>; Ottinger, Elizabeth <Ottinger.Elizabeth@epa.gov>; Gable, Kelly <Gable.Kelly@epa.gov>
Cc: Price-Fay, Michelle <Price-Fay.Michelle@epa.gov>
Subject: RE: individual permit application for Berkley County PSSD

Hello Jessica,

It was nice talking to you other day regarding Berkley County MS4 situation. I truly appreciate EPA's guidance on this matter. However, I would like to clarify some of matter as follow:

I am inserting some of our regulations (47-10 WV NPDES Program) which was approved by EPA.

9.2.b.2. Information. -- The Director has received new information. Permits may be modified during their terms for this cause only if information was not available at the time of permit issuance (other than revised rules, guidance, or test methods), which would have justified the application of different permit conditions at the time of issuance. For NPDES general permits, this cause shall include any information indicating that cumulative effects on the environment are unacceptable.

13.4. Separate storm sewers.

13.4.a. Permit requirement. -- Separate storm sewers, as defined in this section, are point sources subject to the permit program. Separate storm sewers may be permitted either individually or under a general permit. A permit for discharges into the waters of the State from a separate storm sewer covers all conveyances that are a part of the separate storm sewer system, even though there may be several owners or operators of these conveyances. However, discharges into separate storm sewers from point sources that are not part of the separate storm sewer systems may also require a permit.

13.6.b.2.B. The Director may require any owner or operator authorized by a general permit to apply for an individual permit as provided in subparagraph 13.6.b.2.A of this rule only if the owner or operator has been notified in writing that a permit application is required. This notice shall include a brief statement of the reasons for this decision, an application form, a statement setting a time for the owner or operator to file the application, and a statement that on the effective date of the individual permit the general permit as it applies to the individual permittee shall automatically terminate. The Director may grant additional time upon request of the applicant.

13.6.b.2.C. Any owner or operator authorized by a general permit may request to be excluded from the coverage of the general permit by applying for an individual permit. The owner or operator shall submit an application pursuant to section 4 of this rule, with reasons supporting the request, to the Director no later than ninety (90) days after the general permit notice, in accordance with subsection 12.1 above.

Above is State regulation (47-10).

"The Federal regulations at 40 CFR 122.28(b)(3)(i)(E) allow NPDES dischargers to obtain an individual permit when circumstances have changed since the time of the request to be covered under a general permit, so that the discharger is no longer appropriately controlled under the general permit, or either a temporary or permanent reduction or elimination of the authorized discharge is necessary. "

Question is who is going to determine discharge is no longer appropriately controlled under general permit? and how? Keep in the mind they have never comply with MS4 permit regulation before.

I do under federal regulation District is not prohibited to obtain individual permit. however, I would like EPA to emphasis on 13.6.b.2.C above, what I am reading it is need to have general permit out in the public notice first prior to owner or operator can request to have individual permit. Please correct me if I am wrong? District with new entity are requesting to reduce are from previously permitted area. Is it not anti-backsliding? We are getting so many comments from EPA regarding Anti-backsliding, so want to perfectly sure we are doing what is right.

If EPA wants Agency to issue individual permit as of right now, Agency is willing. I just wants to make sure we are following all rules and regulations. Please let us know.

Thanks you very much,
Yogi

From: Martinsen, Jessica <Martinsen.Jessica@epa.gov>
Sent: Monday, August 17, 2020 2:05 PM
To: Patel, Yogesh P <Yogesh.P.Patel@wv.gov>; Lazos.Pamela@epa.net; Driver, Charles S <Charles.S.Driver@wv.gov>; Ottinger, Elizabeth <Ottinger.Elizabeth@epa.gov>; Gable, Kelly <Gable.Kelly@epa.gov>
Cc: Price-Fay, Michelle <Price-Fay.Michelle@epa.gov>
Subject: RE: individual permit application for Berkley County PSSD

Good afternoon Yogesh,

Based on discussions that you have had with Liz Ottinger, and as a follow up to our conversation this past Friday, this email is in response to the questions posed regarding the scenario that was presented. The Federal regulations at 40 CFR 122.28(b)(3) discuss when an individual permit may be required. In this paragraph "any interested person may petition the Director to take action under this paragraph" and the paragraph lists the circumstances for the individual permit. The Federal regulations at 40 CFR 122.28(b)(3)(i)(E) allow NPDES dischargers to obtain an individual permit when circumstances have changed since the time of the request to be covered under a general permit, so that the discharger is no longer appropriately controlled under the general permit, or either a temporary or permanent reduction or elimination of the authorized discharge is necessary.

Berkeley County currently maintains coverage under the WV Phase II MS4 general permit for the entire County area; however, the Berkeley County Stormwater District is now the new entity responsible for overseeing and funding the MS4 program for the County and they have requested that the regulated permit area be changed to include only the Census defined "urbanized area" which is required by federal regulation. As a new entity, the District would need to obtain its own NPDES permit for the modified regulated MS4 area. WVDEP and EPA agree that this would be a necessary step going forward. At this time, the MS4 general permit is expired; therefore, WVDEP cannot authorize new discharges using that permit vehicle. As a result, the District has requested coverage under an individual MS4 permit.

It is EPA's understanding, consistent with federal regulations, that the District is not prohibited from obtaining an individual permit. EPA is available to provide technical assistance to WVDEP in support of this effort if necessary.

If you have any questions please don't hesitate to ask.

Respectfully,
Jessica

Jessica Martinsen, Chief
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From: Patel, Yogesh P <Yogesh.P.Patel@wv.gov>
Sent: Monday, July 27, 2020 10:18 AM
To: Lazos.Pamela@epa.net; Driver, Charles S <Charles.S.Driver@wv.gov>; Ottinger, Elizabeth <Ottinger.Elizabeth@epa.gov>; Gable, Kelly <Gable.Kelly@epa.gov>; Martinsen, Jessica <Martinsen.Jessica@epa.gov>
Subject: individual permit application for Berkley County PSSD

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13.6.b.2.C. Any owner or operator authorized by a general permit may request to be excluded from the coverage of the general permit by applying for an individual permit. The owner or operator shall submit an application pursuant to section 4 of this rule, with reasons supporting the request, to the Director no later than ninety (90) days after the general permit notice, in accordance with subsection 12.1 above.

47-10-4. Application for Permits.

Talks about application requirements.

12.1. Public notice

Talks about public notice procedure.

6.3.j. Reissued permits.

6.3.j.1. Except as provided in paragraph 6.3.j.2 of this rule, when a permit is renewed or reissued, interim limitations, standards or conditions must be at least as stringent as the final limitations, standards or conditions in the previous permit, unless the circumstances on which the previous permit was based have materially and substantially changed since the time the permit was issued and would constitute cause for permit modification or revocation and reissuance.

Please let me know if you need anything else form us.

Thanks
Yogi