



pennsylvania

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Bureau of Watershed Management

COMMENT RESPONSE DOCUMENT

**General NPDES Permit for Stormwater Discharges
Associated with Construction Activities PAG-02
(2009 Amendment)**

TABLE OF CONTENTS

	<u>Page</u>
List of Commentators	ii
Definitions.....	1
Notice of Intent 3.....	1
Part A.....	5
Part B.....	9
Part C.....	9
General Comments	13

Commentators:

1. Adams Conservation District
Gettysburg, PA
2. Chesapeake Bay Foundation
Harrisburg, PA
3. Chester Conservation District
Kennett Square, PA
4. Cumberland Conservation Districts
Carlisle, PA
5. Department of the Navy
Norfolk, VA
6. Dominion Resources Services, Inc.
Glen Allen, VA
7. Monroe Conservation District
Stroudsburg, PA
8. Stover Engineering
Newport, PA
9. Toll Brothers, Inc.
Horsham, PA

DEFINITIONS:

1. **Comment:** There are inconsistencies with the permanent stabilization definition in the PAG-02 and the Chapter 102 regulations. Consider the requirement to have seeded areas to be inspected after one complete growing season. (1)

Response: The Department has revised the permit to be consistent with the current requirements contained in the Chapter 102 regulations.

2. **Comment:** Define under temporary stabilization “will cease for a period of time.” (1)

Response: The Department has deleted the proposed definition of “temporary stabilization,” but has retained the definition of “stabilization” as the term is defined in the Chapter 102 regulations.

3. **Comment:** Why include “waters of the Commonwealth” in the definitions? (1) (3)

Response: The term “Waters of this Commonwealth” is defined in the Chapter 102 regulations. The Department has included this definition for consistency with the regulations and for the convenience of the regulated community.

4. **Comment:** Why was definition of “surface waters” included?

Response: The term “surface waters” is defined in the Chapter 92 regulations, which apply to all NPDES permits. The term “surface waters” as defined in Chapter 92 is included in the permit for consistency with the regulations and for the convenience of the regulated community.

5. **Comment:** Several proposed definition changes should be further clarified. Co-permittee There are now three definitions related to “stabilization” (6)

Response: The Department believes the definition of co-permittee is adequate and does not need to be further defined. The Department has also eliminated the definition of “temporary stabilization” but retained the definition of “stabilization,” and revised the “permanent stabilization” definition to be consistent with the current Chapter 102 regulations.

NOTICE OF INTENT

6. **Comment:** Section 3(b)(13): Define impaired waters. Could this result in an increase in Individual permits? Are the regions capable of handling this work load? Currently 21% of the streams in our county are on the 303d list, are they considered impaired? Page # 4, item # 13. New PAG-02 will require all projects in impaired stream watersheds to obtain individual coverage. Will the NOI be updated to address this? We suggest an e-mail link to the impaired streams list be put on the PAG-02 form for verification. In Chester County, coupled with special protection waters and the White Clay Scenic River (National) approximately 80% of the county would require an Individual Permit. (1) (3)

Response: Impaired waters, as the term is used in this permit, are those waters that are listed on the 303(d) list as impaired. There may be an increase in individual NPDES permits as a result of this permit condition which could increase the workload for regional offices. The regional offices will manage any workload increases as they occur. The Department has revised Condition # 13 of the draft PAG-02. The corrected condition provides that PAG-02 is not available for use for discharges to surface waters identified as impaired waters, if the proposed discharge will result in a net change (pre-condition to post condition) of volume or rate or water quality of the stormwater. In other words, PAG-02 may be used for projects in impaired waters, so long as the discharge will meet the recommended control guidelines in the Department’s stormwater BMP Manual or other documentation by the applicant that demonstrates “no net change”.

7. **Comment:** Page # 4 Item # 3. This language is vague. If it refers to antidegradation, why can't it just be stated? (3)

Response: The language the commentator refers to is existing language in the current PAG-02 and has not been proposed for revision. This language derives from 25 Pa.Code Section 92.81 (a) (7), and is a standard condition for use of general NPDES permits.

8. **Comment:** As published in the PA Bulletin it reads in the middle of the second paragraph of the first page or summary sheet "An additional condition not eligible for coverage under this permit has been added to the notice of Intent (NOI) section for when a proposed discharge to surface waters identified as impaired waters will not meet the recommended control guidelines as listed in the PA stormwater BMP Manual." In the draft permit itself (page 4 of 14) number 13, conditions where the permit is not applicable it reads "discharges to surface waters identified as impaired waters or where the proposed discharge is not meeting the recommended control guidelines as listed in the PA stormwater BMP Manual. Our concern is that as written in the PA Bulletin is that a site must be in an impaired water AND not meet control guidelines and as written in the draft permit it cannot be used if in an impaired water OR not meeting guidelines. These are two completely different scenarios. This does not address must meet, nor does it clearly state what control guidance must be met. What if the project does not meet CG-1 but implements measures that still meet water quality? Will they still be able to use the PAG-02? We get a lot of projects that because of karst geology that infiltration is not recommended. This may cause an additional burden on the Regional Office to review all those additional projects. (4)

Response: The Department has corrected condition 3(b)(13) on page 4 of the permit. The corrected condition provides that PAG-02 is not available for use for discharges to surface waters identified as impaired waters, if the proposed discharge will result in a net change (pre-condition to post condition) of volume or rate or water quality of the stormwater. In other words, PAG-02 may be used for projects in impaired waters, so long as the discharge will meet the recommended control guidelines in the Department's stormwater BMP Manual or other documentation by the applicant that demonstrates "no net change".

9. **Comment:** As written item # 13 (3.b.13, page 4) prohibits use of the PAG-02 permit for stormwater construction sites discharging to any impaired surface waters. Was this the intent? We note that surface waters may be impaired for can be impaired for pollutants not associated with earth disturbance activities or construction sites. In those cases, coverage under the PAG-02 permit should be sufficient. If the impairment is associated with construction site runoff, individual permits requiring more consultation with the department and more stringent controls on stormwater discharge might be necessary. However, given the significant numbers of impaired waters in the commonwealth this might prove to be a considerable administrative burden on both Department staff and the regulated public. We request that the department revise item # 13 to allow the PAG-02 permit for use in impaired watersheds if the impairment is not associated with stormwater runoff from construction activities. We also suggest that the department consider including several more stringent prescriptive BMPs in the PAG-02 which when used might both address water quality concerns and allow use of the general permit in impaired watersheds where stormwater from construction activities is a significant contributing factor. This change greatly expands the number of prohibited surface waters for which this permit could be used, thereby severely limiting the usefulness of the permit. We ask that PA DEP provide an explanation that justifies expanding the number of water bodies for which this permit is prohibited. (5) (6)

Response: As noted in the responses to comments No. 6 and 8 above, condition 3(b)(13) has been revised. If a project proposes to discharge to impaired waters - regardless of the source of impairment - PAG-02 may be utilized, so long as the proposed discharge will not result in a net change (pre-condition to post condition) of volume or rate or water quality of the stormwater. In other words, PAG-02 may be used for projects in impaired waters, so long as the discharge will

meet the recommended control guidelines in the Department's stormwater BMP Manual or other documentation by the applicant that demonstrates "no net change".

10. **Comment:** The current 30 day review period for Notices of intent should be reinstated. Section 3(a) (1) of the current General permit requires submittal of a Notice of Intent (NOI) at least 30 days before commencing construction. The proposed revisions to PAG-02 require an applicant to receive authorization prior to construction and do not include a specific time period for PADEP to provide this authorization. (6)

Response: There is no review period in the 2002 Amendment of the PAG-02 permit. The Department believes that specifying a 30 day review period in the permit is not appropriate or necessary.

11. **Comment:** The PAG-02 should allow use of other more effective standards than those listed in the two manuals. Proposed sections 3(a) (3) and (4) of the PAG-02 mandates the use of the existing guidance documents. We urge PADEP to make clear in the PAG-02 that methods other than the ones provided in the manuals may be more effective and are totally acceptable. (6)

Response: The PAG-02 does not mandate use of the guidance documents and explicitly allows for the use of alternative BMPs provided that proper documentation to demonstrate effectiveness is submitted and approved by the Department. The Department believes the language of these conditions does clearly allow for alternative approaches. For general permits however the Department recommends use of the existing guidance to facilitate the NOI reviews.

12. **Comment:** The proposed changes to PAG-02 extend the time period for the renewal of existing permits before the expiration date. The current provisions require renewal applications be submitted 90 days before the expiration date. The proposed revisions require application 180 days before expiration. We urge PADEP to restore the existing 90 day requirement or even shorten it to 60 days. (6)

Response: Chapter 92 regulations require that permit renewals be submitted at least 180 days before permit expiration. Further, EPA requires that the standard of 180 days be used to be consistent with federal regulations.

13. **Comment:** Notice of Intent (NOI) Submittal, b., (7), (8), (9) & (13): (7) what are these "categorical point source effluent limits" and where do they occur. You must be upfront with such requirements instead of an applicant finding out about such things after a NOI is submitted. (8) Either this General Permit does or does not meet such standards when the design methods specified are followed. Again be upfront where such extra standards come into play. (9) Repeating, this type of special requirements must be provided upfront in the permitting package or should be assumed to be complied with when using the specified design references. (13) What and where are these "impaired waters"? If the discharges don't meet technically complete. This stating the obvious! (8)

Response: These are required conditions under the federal and state NPDES regulations and describe the circumstances where the permit may not be used. PAG-02 can only be used to authorize discharges of stormwater associated with construction activities; it can not authorize other types of discharges regulated under the Clean Water Act or the Clean Streams Law that require NPDES permit coverage. For example a PAG-02 cannot be used to authorize discharges from mining activities.

14. **Comment:** Permit Extensions: Events beyond the control of the permit holder, such as the current crisis in the housing market, sometimes delay the completion of storm water management facilities and other improvements beyond the 5 year term of the permit. Complying with new storm water discharge regulations that could not be contemplated when a development was originally permitted can make the completion of the development unfeasible or uneconomic. Permit holders who have

Response: The federal regulations as well as the state regulations, specifically Chapter 92 regulations, Section 92.13 Reissuance of permits, requires that all NPDES permits must meet all current applicable standards. When a permit is renewed, the activity must be conducted in a manner consistent with the revised requirements and standards.

PART A

15. **Comment:** Has the form for visual inspections been prepared by DEP yet? Define “qualified personnel”, trained and experienced in erosion and sediment control. (1)

Response: The Department will complete an inspection report form and have it posted in the Department’s eLibrary with the other PAG-02 documents on or before December 11, 2009.

16. **Comment:** Consider adding the following “other conditions.” Part 2A (a) visual inspections, you require inspection by qualified personnel trained and experienced in erosion and sediment control. Shouldn’t the plan be implemented by those who are also trained and experienced in erosion and sediment control? Maryland has a certification program which requires operators to complete some basic training. While the certification may be minimal it may avoid unnecessary problems on permitted sites. (1)

Response: The Department has added the requirement that E&S BMPs shall be designed and implemented by “qualified personnel trained and experienced in erosion and sediment control.” However, a certification program under this permit renewal cycle can not be instituted at this time.

17. **Comment:** The currently proposed permit lacks quantitative discharge standards. The current, PADEP Erosion and Sediment Pollution Control Manual (No. 363-2134-008), herein referred to as ESPCM, is not designed to meet quantitative discharge standards or requirements; it is merely a lengthy list of possible BMPs, together with their precise specifications and application methodologies no performance standards or objectives are prescribed. No preferences or requirements or even evaluative, step wise processes for choosing among BMPs are set. The manual is merely a laundry list of BMPs that the Commonwealth recognizes as potentially useful in a variety of settings.

First, the permit should establish a "no visible off-site discharge" standard as a first line of defense. Such a visually based requirement is easy to use by citizens, inspectors, and contractors. However, the permit should also establish a numeric turbidity limit of 150 NTUs (Nephelometric Turbidity Units) as an instantaneous maximum for rainfall events of less than 1 inch and a 50 NTU limit as an average¹. If these limits are exceeded; a detailed assessment of site conditions and remedial actions along with enforcement should be imposed. Additionally, there is a well understood correlation between prevention of turbidity/sedimentation and prevention of phosphorus entering Pennsylvania streams and the Chesapeake Bay. Phosphorus often found bound to soil particles and is transported via sediment-laden discharges from construction sites, among other sources. A significant reduction in sediment/turbidity is therefore crucial to the prevention of phosphorus induced pollution. In short, turbidity limits serve as an important and quantifiable means for measuring whether construction sites are contributing to local and regional water quality impairment and degradation. (2)

Response: The Department disagrees. The effluent limits established in this program are consistent with the Clean Water Act and Clean Streams Law. Both the Clean Water Act and Clean Streams Law authorize a narrative performance based approach. The Department believes that concentrating flows solely for the purpose of measuring and treating them is not environmentally sound or protective of the Waters of the Commonwealth. The Department also believes that the

use of numeric effluent limitations would be counter-productive to the use of low impact design standards, and the use of BMPs that disconnect, distribute, and decentralize stormwater.

- 18. Comment:** The effluent limitations established in Part A. 1.a. are insufficient. This section suffers from the same shortfalls as those above, referencing how the permit establishes "narrative performance-based effluent limitations in the form of BMPs identified in E&S Plans ...," but setting up the tautology that, if a BMP is merely in an accepted Plan, it automatically is deemed an acceptable, performance-based effluent limit. Standard BMPs fail routinely for a variety of reasons. Regardless of specifications, they are often installed improperly, improperly maintained by the permit holder, and infrequently inspected by state or local agencies. The expression of specific, objective standards that must be achieved is one cure for this tautology, and for the total uncertainty it presents for the future of waters of the Commonwealth.

Thus, establishing a "no visible off-site discharge standard coupled with turbidity limitations, as detailed above, to a level that is both technically achievable and cost-effective would enable both site operators and government inspectors to be able to objectively determine whether BMPs are operating properly or whether modified, different or additional BMPs are necessary. (2)

Response: The Department disagrees with the commentator's characterization of the program performance requirements. The Department has not modified PAG-02 as suggested by the commentator. This permit renewal must implement existing regulations. The Department recognizes however, that BMPs can and sometimes do fail. This is why the regulations and general permit require inspections weekly and after each measurable rain event.

- 19. Comment:** The permit should require that discharges observing noncompliance report findings to authorities within 24 hours.

The time during and immediately after a substantial rain event is critical to preventing lasting effects from sedimentation and pollution. Contractors should be expected to not only visually inspect but report the results of rain events to either PADEP or County Conservation District inspectors within 24 hours. In that reporting, contractors/developers should be required to describe the inspection steps they have taken, the findings of sediment leaving the site and increased levels of turbidity if any, and the remediation steps taken. All inspecting authorities should be required to follow up on these reports where sediment pollution occurred. Similar requirements are contained in the State of Washington's construction stormwater general permit.⁴

In C.2.d, the permit should clearly state that Wasteload Allocations (WLAs) must meet and not exceed as set forth in an approved TMDL.

The current language is ambiguous and confusing. PADEP should simply state that activities authorized under this permit must meet and not exceed WLAs set forth in any applicable TMDL.

Secondly, PADEP fails to define a "stormwater management program" under this section. (2)

Response: The Department changed "immediately" to the specific period of time "within 24 hours" as recommended by the commentator. The Department does not believe it is necessary to define a stormwater management program.

- 20. Comment:** The proposed revisions to the visual inspection requirements are excessive. (5)

Response: The Department disagrees. The key to controlling erosion and sedimentation and managing stormwater is to ensure that the site plans are being fully and properly implemented and maintained. Visual inspections are the "monitoring" that is required by federal regulations. The weekly inspections and required inspections within 24 hours after each stormwater event meet the federal monitoring requirements, ensure that the BMPs are functioning properly, and that any BMPs requiring maintenance will be immediately addressed.

21. **Comment:** The whole issue of site inspections, reports and certification of construction of design E&SC and Stormwater BMPs must be re-examined. Weekly and other site inspections by, and a final certification by a licensed professional will be extremely expensive, adding thousands of dollars in fees to the normal construction phase of small developments. Pre-job estimates of such fees may be sufficient to cause land owners to delay or permanently postpone home building. This is certainly not the time to institute regulations/permitting requirements that result in such antidevelopment results. Why is it not sufficient to have the contractor (co-permittee) made responsible and liable for completing the inspection/reports/ certifications since he is the one responsible for the proper work and carries insurance to protect himself against non-compliance claims? (8)

Response: The weekly site inspections and inspections after each measurable rainfall event are existing requirements and are necessary to ensure protection of waters of the Commonwealth and to satisfy regulatory monitoring requirements. These inspections do not need to be conducted by a licensed professional, they are to be conducted by "qualified personnel" who have the training and experience in erosion and sediment control to ascertain whether E&S and PCSM BMPs are properly constructed and maintained to effectively minimize pollution to Waters of this Commonwealth. The final certification of a project will need to be conducted by a licensed professional. The final certification is needed to ensure that all work has been performed in accordance with the terms and conditions of the permit and the approved E&S and PCSM plans.

22. **Comment:** Part A; 1. Effluent Limitations: Get real! Either this General Permit meets the effluent limitations under these other listed DEP regulations or it doesn't. Sounds like the DEP is forewarning applicants that at any time they can employ other regulations to shut things down or impose fines. This item must be deleted. Same as for a. Either identify upfront what and where these limitations are or delete this item. (8)

Response: The Department disagrees. These permit conditions establish the effluent limitations that are required under the general permit and existing regulations. If the activity can not or does not meet the effluent limitations established by this permit, it cannot be used to authorize the construction activity.

23. **Comment:** Monitoring, Inspection and Reporting Requirements: a. visual inspections Does .01 of rainfall qualify as a Stormwater event? Although conditions vary across the State and by season, a 1" or greater rainfall event will usually trigger a runoff condition to the BMP's. Accordingly, it is recommended that this standard be changed to: conducted weekly and within 24 hours after any rainfall event of 1" or more of precipitation throughout the duration...Very important!! At this juncture it is stated that the inspections must be completed by persons "trained and experienced in E&S control". See later comments concerning this item. b. Noncompliance Reporting: If you want this to work you must add a requirement to item a., requiring that the inspection reports must be turned over to the owner and/or operator with 24 hours of the inspection. It is not the inspector's duty to do all of the follow up items listed under this requirement, but the owner/operator. (8)

Response: The term "stormwater runoff" has been removed and has been replaced by the term "measurable rainfall" event which is contained in the current Chapter 102 regulations. The Department has considered but declines to make the other changes recommended in this comment.

24. **Comment:** Required form: Pertaining to Part A, paragraph 2a, the visual site inspections and reports shall be completed in a format provided by the Department...". We would like to see this modified to include forms provided by or mandated by the USEPA as part of a consent agreement. The purpose is to avoid having to complete two separate forms for each inspection for those permit holders operating under a consent agreement with the EPA. (9)

Response: The Department will consider this suggestion and discuss with EPA.

PART B

25. **Comment:** Completion certificate and final plans are an excellent requirement. (1)

Response: The Department thanks the commentator for their support.

26. **Comment:** Page # 8, (part B) what are the ramifications, if any, of having your permit revoked and/or terminated? Is this just saber rattling? (3)

Response: This is standard language from the existing permit and if the permit is revoked or terminated by the Department the permittee and or co-permittee(s) must stop work and stabilize the site.

27. **Comment:** The new proposal includes provisions for submitting a completion certification. This should not be required. Part B, Section 1(J) of the proposed PAG-02 includes new requirements to submit a completion certification and final plans. We recommend this provision be removed. (6)

Response: The Department disagrees. Completion certifications are needed to ensure that all work has been performed in accordance with the terms and conditions of the permit and the approved E&S and PCSM plans.

28. **Comment:** PART B 1. Management Requirements: c. Signatory requirements (1) I believe you forgot owners and leases as far as who should sign the NOIs. (2) Be Consistent!!! These plans, documents and other information (including inspection reports) should be signed by a person "trained and experienced in E&S control" as previously stated in this document. You repeated yourself at the end of this sentence. d. Transfer of Ownership or Control. (1), (b) – The requirement that the new owner is "jointly and individually liable" is confusing to the original permittee is then absolved of such responsibilities. (8)

Response: The signatory requirements of the NOI are consistent with the federal requirements and the Chapter 92 regulations, section 92.23 Identity of signatories to NPDES forms. The repeated entry in Section c. 2 has been deleted. The language in section d. 1. b was not modified from the existing permit language (PAG-02, 2002 Amendment).

PART C

29. **Comment:** There appears to be inconsistencies in part C (see # 2a, 4 and 7) as to whether or not the E&S plan shall be reviewed and approved by the CDs for off-site spoil and borrow areas. (1)

Response: The Department does not see these items as being inconsistent. Spoil and borrow areas must be included in the E&S plan and reviewed as part of the application process.

30. **Comment:** I thought we had agreed to implement the following language in part C: "prior to proceeding with the bulk earth disturbance activities, the permittee or co-permittee shall provide written notification to the Department or authorized CD upon the installation and/or stabilization of all perimeter sediment control BMPs". For years many sites have been out of compliance with the most basic of plan implementation. In Maryland, they require the inspector to field verify, not just a written notification. The contractor may not proceed with bulk earth work until controls are in place. (1)

Response: The Department has added this additional requirement to Part C for erosion and sediment control plans.

- 31. Comment:** The currently proposed permit lacks appropriate site stabilization standards. One of the most important management practices that should be used, in virtually all construction settings, is appropriate site stabilization in order to reduce the amount of sediment moving across a site which must then be captured. The ESPCM describes temporary and permanent stabilization and highlights some accepted techniques, but sets no standard for when it must take place, e.g. within 24 hours of temporary cessation of earth disturbance activities, or within 48 hours of permanent cessation of work. Furthermore, the term "temporary cessation" requires a precise definition.

Similarly, site staging or phasing is generally described and required (e.g. Part C.2.c. of the permit states that the staging set out in approved plans must be followed), but no standards are provided. For example, staging standards often state that construction sites of 5 acres or larger, no more than 10 acres or 25 percent of a site, whichever is greater, may be mass graded or cleared at any given time.

Related to the concern of not specifying site staging or phasing requirements, is the matter of an upper limitation for the size of construction sites which may be covered by this general permit. It is our opinion that sites larger than 25 acres, regardless of receiving waterbody status (e.g. impaired or HQ/EV) should be required to obtain an individual NPDES stormwater discharge permit in order to assure the adequate protection of waters of the Commonwealth.

There are also no requirements for covering stockpiles within a given time frame (e.g. 24 hours) and there is no required protection of existing storm drains. These kinds of standards would provide the certainty currently lacking in the permit and necessary for its next generation expression, but none are present.

The current and proposed ESPCM is incomplete with respect to the extent to which it describes, proposes, or prefers the use of low impact development (LID), environmental site design (ESD), or less structural BMPs in a wide variety of settings, such as are preferred in the Commonwealth's new Post-construction BMP Manual, nor does it provide an analytical method or process for determining which BMP may be more or most appropriate. No standards or requirements are provided.

Technical literature and case studies clearly demonstrate that physical erosion prevention methods via application of LID/ESD can achieve low turbidity levels in discharges of stormwater from construction sites. When combined with the use of traditional erosion and sedimentation controls, LID/ESD can reduce the number and/or size of sediment traps and basins needed to control construction site stormwater.² However, PA DEP's currently proposed permit largely fails to recognize and encourage the use of site planning techniques. This is counter to the National Research Council committee recommendations which stressed LID/ESD as the preferred approach.³ (2)

Response: Site stabilization standards are established in the Chapter 102 regulations and various BMPs may be utilized to meet those requirements are recommended in Department technical guidance.

- 32. Comment:** Page # 12 (# 4 PPC Plans) Have we not already established that all sites have the potential for accidental pollution? Why confuse the issue with this long winded paragraph. A simple "all sites must develop a PPC plan" would suffice. Suggest reference to Chapter 91 of DEP regulations and guidelines for the Development and Implementation of environmental Emergency response Plans, DEP ID: 400-2200-001, available on DEP's website. (3)

Response: This is standard language which has not been changed from the existing permit (PAG-02, 2002 Amendment) and is consistent with the Chapter 91 regulations. A reference to the Department's guidelines is included in the instructions.

33. **Comment:** Page 13 (Pre-construction conference). This would be a good opportunity to list what the permittee must bring to the pre-construction conference. They should have an approved stamped plan from the CD, their NPDES permit, Sewage Facilities Act 537 paperwork stating approval or waiver. (3)

Response: The Department has revised the statement to read: “the permittee or co-permittee must bring a copy of their NPDES permit, a copy of the stamped plan from the conservation district, and all associated Department approvals/permits which must be available at the conference upon request.”

34. **Comment:** The proposal includes a requirement for the management program to be consistent with the assumptions and requirements of any Waste load Allocations (WLAs) as set forth in any applicable Total Maximum Daily Loads (TMDL). Dominion requests that Pennsylvania clarify how the assumptions used to develop TMDLs should be reflected in stormwater management plans. Part C (2) (d). (6)

Response: The language requiring consistency with the assumptions and requirements of any waste load allocation derives from the federal regulations found at 40 CFR 122.44(d)(1)(vii)(B). Each stormwater management plan will be site specific and the TMDLs themselves, are based on localized impairments of streams. An iterative, adaptive BMP management approach will be necessary to implement water quality protective measures. Stormwater management plans should contain a combination of structural and non-structural BMPs that address storm water discharges, a plan to evaluate the performance of such controls, and make adjustments (i.e., more stringent controls or specific BMPs) as necessary to meet the TMDL and protect water quality. Plans may need to incorporate the use of regular performance evaluations to determine whether expanded or better-tailored BMPs are necessary to implement the WLA and protect water quality.

35. **Comment:** This proposal requires that wetland determination must be conducted in accordance with Department procedures if hydric soils or other wetland features are present. Part C, Section 10. This is an unnecessary requirement of this permitting vehicle in that this is required by other regulations that directly address wetland protection. We recommend it be removed from the proposed PAG-02. (6)

Response: The Department disagrees. This is a well established permitting and regulatory requirement that facilitates efficient coordination among the Chapter 102 and Chapter 105 regulatory programs. If hydric soils or other wetland features are present a wetland determination must be completed so that the wetlands can be identified on the E&S and PCSM plans so that impacts to these water resources will be avoided or minimized.

36. **Comment:** The proposal requires that earth disturbance may not commence until all related Sewage Facilities Planning approvals have been obtained. This will unnecessarily delay industrial construction projects. Part C, Section 13 of the proposed PAG-02 is a new requirement which would potentially delay construction of a facility until sewage planning approvals have been obtained. While this may be appropriate for housing developments, it would unnecessarily impact construction of industrial facilities. Obtaining local sewage approvals often take an extended period of time and sewage facilities are not normally installed early in the construction for industrial facilities which have phased construction schedules. We recommend it be removed from this proposal. (6)

Response: If industrial facilities being constructed will require sewage facilities they may need to obtain Act 537 Plan approval and may not commence with earth disturbance until they have obtained Act 537 approval. There are many factors to be considered to determine when an industrial facility must be included in Act 537 base planning. During the planning phase of their project, prior to submission of the PAG-02 NOI an applicant should consult with the Department's Act 537 Program, the local Sewage Enforcement Officer, or the local municipality to determine the need for Act 537 planning approval.

- 37. Comment:** The Clean Fill Requirements found in Part C, other conditions, 7 Spoil or Borrow Area, state that the person placing the fill must use Form FP-001 to certify the origin of the fill and the results of the analytical testing. This condition is critically important; however Form FP-001 currently does not indicate the origin of the fill or specify that it must be filled out by the person placing the clean fill. Either a different form should be developed and referenced in PAG-02 or FP-001 should be amended. (7)

Response: The Department will evaluate the adequacy of the FP-001 form with Department Waste Management staff.

- 38. Comment:** We suggest that Part C, Other Conditions, 5. Post Construction Stormwater Management Plans, include the following requirements: 1) A Licensed Professional or a designee shall be present on site and be responsible during critical stages of implementation of the PCSM Plan including underground treatment or storage BMPs, structurally engineered BMPs, or other BMPs as deemed appropriate by the Department, including those located on subdivided lots; 2) Permittee shall include with the Notice of Termination "Record Drawings" certified by a licensed professional; 3) The deed for any property containing a PCSM BMP shall identify the PCSM BMP and provide notice that the responsibility for operation and maintenance of the PCSM BMP is a covenant that runs with the land and, unless a different person is approved in writing by the Department, operation and maintenance of PCSM BMPs shall be the responsibility of the landowner of the property where the PCSM BMPs are located. (7)

Response: These suggested revisions are included in the proposed Chapter 102 regulation revisions. The Department will evaluate whether to amend the PAG-02 to conform to the final Chapter 102 revisions when the rulemaking is completed.

- 39. Comment:** PART C 2. Erosion and Sedimentation Control Plans: a. it is at this point where legal requirements for plan preparers must be listed. d. Where and what these requirements are must be listed beforehand. It is totally unfair to pop this requirement on to someone after a NOI has been submitted. The same comment also pertains to the Post Construction Stormwater Management Plan. (8)

Response: The Chapter 102 regulations identify the legal requirements for persons preparing E&S plans. Persons who wish to use the general permit must evaluate their ability to meet the permit conditions before they submit the NOI.

- 40. Comment:** Preparedness, Prevention and Contingency Plans: It must be made clear under what circumstances this plan shall be required. Define "potential". Is the leaking oil pan from the contractor's pickup truck such a potential, etc.? (8)

Response: The Department disagrees that "potential" must be defined. Petroleum products that are spilled or released should be addressed in the PPC plan.

GENERAL COMMENTS

41. **Comment:** Public notice and participation is insufficient. §402(b) (3) of the Clean Water Act states that permits may be issued only after opportunity for [public comment and/or] a public hearing, and requires that public notice be made of each application for a permit. The NOI, which serves as a permit application, may meet Pennsylvania's public notice requirements (25 Pa. Code §92.83(a) (3)) and may be in accord with EPA's interpretations, but 3.a (l) of the proposed permit merely says that "the NOI shall be filed in accordance with the detailed instructions specified in the NOI instruction package." These are not attached not nor more importantly incorporated by reference, so there is no way to know or be assured:
- a. there is sufficient publishing of the NOI;
 - b. whether there is sufficient lead time ahead of project activity by which the NOI must be posted (it should be at least 30 days);
 - c. whether there is an opportunity afforded the public to comment or request a hearing thereon; and
 - d. whether sufficient information is published or electronically posted to PADEP and the public - i.e., the plans and documents or at the least a detailed description of the full activity - to provide the public with an
 - e. understanding of the scope of the proposed earth disturbance so members of the public can knowledgably comment or request a hearing.

Under the CWA, the public is entitled to sufficient review. Part C.2.b. of the draft permit in fact indicates that the E&S Plans themselves "shall be made available to the public upon request." This is an insufficient response to the CWA's public notice and comment requirements, since the public may not have enough information available through the NOI itself to know in the first place whether a request for such information needs to be made.

Paragraph 3.a (3), Part A, and Part C of the proposed permit are the operative parts that reference the standards by which permit holders must operate. Paragraph 3.a. (3) references PA DEP's Erosion and sediment Pollution Control Manual, No. 1363-2134-008 as containing the standards and specifications under which E&S BMPs must be developed, implemented and maintained. Part A. 1(a) states that the permit establishes narrative performance based effluent standards in the form of BMPs identified in appropriate Plans, which regulation pollution. A.1 (b) states that all stormwater discharges associate with construction activities must comply with applicable limitations from the Code. A. 1 (c) states that applicable WQ-based effluent limitations shall be imposed as necessary to ensure that the water quality standards of receiving waters are attained, and that discharges from construction activities "shall not result in a violation of such wafer quality standards." Part C requires the preparation and submittal of E&S Plans "designed to minimize the potential for accelerated erosion and sedimentation.", and references certain other special circumstances or important matters (i.e. site staging, TMDLs, wetland protection, etc). Each of these parts of the permit exhibits the same problem with a lack of objective standards, and is analyzed below. (2)

Response: The PAG-02 follows Chapter 92 regulatory requirements for public notice. These public notice requirements have not been modified from the existing permit (PAG-02, 2002 Amendment).

42. **Comment:** The permit should prohibit the use of a general permit for construction sites which propose earth disturbance within 100 feet of Waters of the Commonwealth. In such instances, an individual permit should be required.

Innumerable research and case studies have documented the value of vegetated riparian buffers at absorbing and blocking construction site-generated sediment from entering waterways. To that

end, we believe that all construction and post-construction permits should require the maintenance or creation of a 100 foot buffer alongside all Pennsylvania streams. However, at a minimum, we believe that for projects which propose earth disturbance within 100 feet of Waters of the Commonwealth, the use of a general permit should be prohibited. Permit applications which propose such earth disturbance should be required to obtain an individual permit.

Therefore under section 3.b. of the current draft permit, we propose the addition of "Discharges from construction sites in which earth disturbance activities will occur within 100 feet of any surface water."

Requiring applicants to obtain an individual permit under these conditions offers greater assurance that the impact of earth disturbance during construction can be substantially limited in terms of sediment and nutrient impacts to Pennsylvania waters. (2)

Response: The prohibition on the use of the PAG-02 within 100 feet of Waters of the Commonwealth is not supported by existing Chapter 102 regulations.

43. **Comment:** On page 1 at the top, the PAG-02 exempts oil and gas transmission facilities. This indicates that the NPDES permitting for pipelines has now or will be exempted in all NPDES permitting under the new Chapter 102. How will that disturbance be justified? We recommend that pipelines (large transmission lines) be required to obtain an NPDES permit. (3)

Response: The PAG-02 is consistent with the existing federal and state regulations, the Federal Clean Water Act, the Federal Energy Act and the Clean Streams Law. At this time, oil and gas transmission facilities exempt from the NPDES permit for stormwater discharges associated with construction activities must obtain coverage under ESCGP-1.

44. **Comment:** Dominion requests an extension of the public comment period. We believe the proposed changes to the PAG-02 are significant and are concerned given the short public comment period, many stakeholders will not be able to fully consider the changes that are being proposed in this short period of time. We also note that the august 29 Pennsylvania Bulletin contains proposed revisions to the erosion and sediment control and the stormwater management regulations under 25 Pa Code Chapter 102. Since the General Permit for Stormwater Discharges Associated with Construction Activities (PAG-02) is closely linked to the erosion and sediment control and stormwater regulations. We urge PADEP to extend the public comment period for the proposed changes to PAG-02 to correspond with the comment period for the erosion and sediment control and stormwater regulations, which is November 30, 2009. We are aware that the current general permit will expire on November 7, 2009, but strongly urge the agency to consider extending the current permit until these two proposals can be fully reviewed and considered together. (6)

Response: The current PAG-02 General NPDES Permit expires on December 7, 2009 and will not be extended. The Department has received numerous comments within the 30 day comment period. Therefore, in order to adequately review the comments received and to renew the permit in a timely manner, the comment period was not extended.

45. **Comment:** The legal issue of whether the design of, and inspection of E&S controls and Stormwater controls meets the definition of "Practice of Engineering" as provided for under the Chapter 37. State Registration Board for Professional Engineers, Land Surveyors and Geologists regulations MUST BE Determined. DEP does not have the legal authority to turn on or off such licensing requirements at its whim. As I noted in my comments, this issue is of sufficient importance to postpone adoption of this amendment before it is resolved, as part of the Chapter 102 revisions review process. I will be forwarding copies of this letter and my comment to the State Licensing Board to ask for their involvement in this matter. (8)

Response: This comment is beyond the scope of the renewal of PAG-02, which implements the existing regulations and interpretations of the Federal Clean Water Act and the Clean Streams Law.

46. Comment: Very Important!! No licensed Professional that I have talked to will agree to sign and seal such certified statements that would, in effect, validate a person's E&SC and Stormwater design work who is not a registered Professional Engineer or, validate work that was completed and inspected by such individuals. This is a major problem with the Chapter 102/NPDES program. The proper arena for discussion and resolution of this issue will be during the comment period for the proposed Chapter 102 regulations. Basically, are E&SC and Stormwater design and inspections work that meets the definition of "practice of engineering" under existing Pennsylvania Law? I and many other PE's that I have talked with firmly believe that it does and are going to press DEP to resolve this issue once and for all. Accordingly, I strongly recommend that this GP be placed on hold until such time as this issue is resolved. 2. Compliance Responsibilities c. Penalties and Liability & g. Other Laws Either this General Permit is structured to be in compliance with these other laws and regulations or it is not. Make up your mind! If you want to list this other items you should preface it by saying if you do everything as instructed and remain in compliance then these other requirements have been satisfied. However, if you go and remain into noncompliance then these other laws/regulations will come into play. (8)

Response: All PCSM BMPs must be designed by a licensed professional. The Department has consulted with the state licensing boards regarding this requirement. The Department is not proposing to change this requirement at this time. Site inspections are not the practice of engineering and are done by qualified personnel who have the training and experience to conduct these inspections.