

Comment/Response Document for 2012 Amendment to PAG-02

1. Comment: We strongly support the proposed 5-yr. permit coverage. While we understand the reasons for the previous 2-yr. coverage, the 180-day renewal submission deadline almost always required the permit to be renewed. Most projects don't begin immediately upon receipt of the permit, and larger projects cannot be completed and achieve permanent stabilization within this timeframe. (1)

Response: The Department acknowledges the comment.

2. Comment: We strongly support the revision to Section 3.B(13) authorizing a net volume increase in the pre- to post-construction condition to an impaired receiving water if documentation is provided showing the discharge will neither cause nor contribute to a specific impairment. (1)

Response: The Department acknowledges the comment.

3. Comment: With respect to the comment above, the Department should provide the resources used to establish the specific characteristics and locations of the impairments listed in the "PA Integrated Water Quality Monitoring and Assessment Report" so applicants can provide the necessary documentation showing their project will not contribute to the existing impairment(s). (1)

Response: The information is provided through a link in Worksheet 1 in the Pennsylvania Stormwater Best Management Practices manual. A reference and link to the information will also be included as part of the application information.

4. Comment: Also, with respect to Comment 2, we suggest the following wording be added to Section 3.B(13): "...stormwater unless the applicant provides volume control BMPs suitable and practicable to the project site and an analysis is completed...". (1)

Response: Volume control is not the only issue with TMDLs. While volume control can be considered a surrogate for some pollutants of concern, for some TMDLs additional water quality analysis must be conducted.

5. Comment: We are pleased to see that the Department intends for the permit coverage to return to five years. (2)

Response: The Department acknowledges the comment.

6. Comment: Page 1 1st Paragraph – We would encourage the Department to add "over the life of the project" to the first sentence. (2)

Response: The Department disagrees. The language utilized is consistent with regulatory language in 102.5(a). The language suggested by the commentator is not appropriate for the activities permitted by PAG-02.

7. Comment: Definitions: Please add a definition for “impairment or impaired”. (2)

Response: The definition is contained in the Department’s Integrated Water Quality Monitoring and Assessment report.

8. Comments: Definitions: Please define “record drawings”. (2)

Response: The Department disagrees that a definition of this term is necessary.

9. Comments: Definitions: ABACT and BMPs – We encourage the Department to include identical language regarding to “maintain and protect the existing quality” in the ABACT definition while the BMP definition includes the words “reclaim and restore”. (2)

Response: The Department disagrees. These terms are consistent with regulatory definitions found in 25 Pa. Code § 102.1.

10. Comment: Definitions: Add a definition for “pollutant”. (2)

Response: Pollutant is defined in 25 Pa. Code § 92a.2.

11. Comment: Page 3 – Transferee – We believe the definition should include the word “after” with the word “during” the construction activity in order to address issues related to PCSM. (2)

Response: The Department disagrees. Once construction is completed, the permit should be terminated using the notice of termination form and permittee can identify other parties that have agreed to assume the responsibility for long-term operation and maintenance.

12. Comment: Page 4,3. NOTICE OF INTENT (NOI) SUBMITTAL: b. The following activities are not eligible for coverage under this permit: Clear guidance on all of the 15 activities that are not eligible for coverage needs to be provided. (2)

Response: The Department has considered and acknowledges the comment.

13. Comment: NOTICE OF INTENT (NOI) SUBMITTAL: Page 5 (13). We are glad to see “unless an analysis is completed which documents that the discharge will neither cause nor contribute to an impairment of the receiving water”, has been added. We look forward to understanding how this analysis will be done. We would like to see and understand both the criteria and methodology that will be used for this analysis. We also have concerns about how this analysis will fit into the proposed timeframes proposed by [the] Department’s proposed policies under the Governor’s Executive Order 2012-11. The Department could consider changing (13) by qualifying this exception when the cause of the impairment is specifically due to either sedimentation or stormwater. (2)

Response: The Department has provided clear and consistent guidance on this analysis since 2009. The analysis can be found at the following website in the response to question 18: <http://files.dep.state.pa.us/Water/Watershed%20Management/WatershedPortalFiles/StormwaterManagement/PAG-02%20QA.pdf> .

14. Comment: NOTICE OF INTENT (NOI) SUBMITTAL: Page 5 (14) Will the addition of the Chesapeake Bay TMDL no longer allow General Permits to be used anywhere within the Chesapeake Bay watershed? Please explain what the “assumptions and requirements are to be consistent with the TMDL.” Although we have tried to understand how a TMDL affects the use of this permit, we admit that we still do not understand. We look forward to receiving some clearly defined training and guidance on this complicated issue. (2)

Response: Yes, this general permit may be used within the Chesapeake Bay Watershed, as well as any other waters in the Commonwealth with an applicable TMDL. This standard regulatory language that any activity with a discharge of the pollutants of concern must be compliant with all the assumptions and requirements established within the TMDL report document means generally that the activity being authorized must include BMPs as effluent limitations that address the TMDL pollutants of concern. The Department will continue to provide training and materials on topics relevant to this issue and permit.

15. Comment: NOTICE OF INTENT (NOI) SUBMITTAL: Page 5 (15) Discharges to municipal separate storm sewer systems (MS4s) and combined sewer overflow (CSO) systems are not allowed to have an increase in volume. This seems to be inconsistent with if or when an increase in volume is or is not allowed. (2)

Response: The permit condition requires that there not be a change in volume if the discharge is to a regulated MS4 or CSO.

16. Comment: NOTICE OF INTENT (NOI) SUBMITTAL: Page 10 (d) Transfer of Ownership or Control. (2) Please provide an example of when the Department or conservation district may require an applicant to get an individual permit. (2)

Response: This would apply when the new owner or operator is ineligible for coverage under a general permit. One example of this would be when the new owner has a significant history of non-compliance.

17. Comment: NOTICE OF INTENT (NOI) SUBMITTAL: Page 11 (g) Adverse Impacts – The terms “prevent, minimize or cease” are all used. Additional guidance is needed to determine which action applies. Please define “reasonable steps”. (2)

Response: If the discharge in violation of this permit has not commenced, then the discharge should be prevented. If the discharge in violation of this permit has commenced, then the discharge should be minimized or cease/be eliminated consistent with the other terms and conditions of this permit. Reasonable steps are those to meet the minimum regulatory requirements necessary to utilize this authorization.

18. Comment: Page 13 Part C 2. EROSION AND SEDIMENT CONTROL PLANS: (a) Please define or explain how one determines if the E and S plan has been prepared by a person trained and experienced in erosion and sediment control methods. Over the years, we have suggested that the state consider a certification program instead of one being “trained and experienced in erosion and sediment control methods”. (2)

Response: This language tracks the regulatory requirements in Chapter 102. At this time there is no certification program, but the Department acknowledges the recommendation. “Trained and experienced with erosion and sediment control methods” should be interpreted using a common sense approach, which will be informed in part by whether the plans effectively address the regulatory requirements for the proposed site. The Department provides training programs and acknowledges various professionally-offered training opportunities.

19. Comment: Page 14, 5. POST CONSTRUCTION STORMWATER MANAGEMENT PLANS: (a) [Note: due to revisions in the permit, section (a) is now section (b)] ...”The PCSM plan must employ stormwater management BMPs to control the volume, rate and water quality of the post construction stormwater runoff so as to protect and maintain the chemical, physical, biological properties, and existing and designated uses of the waters of the Commonwealth”. Throughout this permit, there are many inconsistencies related to exactly what it is that the applicants need to do relative to terms such as minimize, prevent, control and to the maximum extent practicable. We also believe that the PAG-02 language is inconsistent with the Chapter 102 regulations. We would encourage the Department to make PAG-02 consistent with the Chapter 102 regulations. (2)

Response: The Department disagrees that there are inconsistencies between PAG-02 and Chapter 102, and in the absence of identified examples from the commentator it is not clear on where the commentator believes the permit contains such inconsistencies.

20. Comment: Page 14 7. SPOIL AND BORROW AREAS: We would encourage the Department to add that the E and S plans “shall be reviewed and determined to be adequate by the Department or authorized conservation district.” (2)

Response: The Department agrees. The E&S plan for spoil and borrow areas should be reviewed and approved before the permit issuance. Clarifying language has been added to the permit.

21. Comment: Page 15 10. WETLAND PROTECTION: This requires that a determination “must” be conducted but “should” be submitted. We recommend changing the word “should” to “must”. We also suggest that a jurisdictional wetland determination be done by a regulatory authority. (2)

Response: The Department has not modified the permitting language to address this comment. The Department disagrees that a jurisdictional determination needs to be conducted.

22. Comment: Page 16 16. MUNICIPAL SEPARATE STORM SEWER SYSTEMS: Please provide us with the definition of “qualified local program”. (2)

Response: The requirements of a qualified local program are defined in the Department’s MS4 permit, PAG-13, and in the federal regulations.

23. Comment: Page 16 17. PUBLIC NOTICE OF NOI'S INCLUDING AN OFFSET OR TRADE: Please provide conservation districts training to understand how this section of the permit works as well as in the Chapter 102 regulations. (2)

Response: The Offsetting Policy is under development. Training will be provided when the policy is finalized.

24. Comment: Please consider adding a permit condition that requires all operators to be added onto the permit prior to earth disturbance activity. We spend too much time chasing contractors in order to get the appropriate co-permittee paperwork. (2)

Response: "Chasing contractors" is the responsibility of the permittee and not the Department or delegated county conservation district.

25. Comment: Establish narrative discharge standards for all permitted sites: The current, PADEP Erosion and Sediment Pollution Control Manual (No. 363-2134-008) is not designed to meet quantitative discharge standards or requirements; it can be more appropriately described as a lengthy list of *possible* BMPs, together with detailed specifications and application methodologies. No performance standards or objectives are prescribed. No explicit 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.

The permit should establish, at a minimum, a "no visible off-site discharge" base-line standard for all construction sites requiring an NPDES permit. Such a visually based requirement is easy to use by citizens, inspectors and contractors. (3)

Response: Comments on the Erosion and Sediment Pollution Control Manual (No. 363-2134-008) manual are outside the scope of this Department action. The regulations and permit do both require narrative based effluent limitations in the form of BMPs to be included in the E&S, PCSM PPC Plans.

The Department disagrees that the permit should establish a "no visible off-site discharge" standard. The permit is consistent with the regulations, which do contain performance requirements. Further, the regulations require a more comprehensive and scientifically based approach to inspections.

26. Comments: Requirements proposed in Part C.12. Stabilization are necessary and appropriate: 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. PADEP's requirement that stabilization occur for any non-disturbance that will last greater than four (4) days is appropriate. (3)

Response: The Department acknowledges your comment.

27. Comment: Requirements proposed in Part C.14. Long-Term Operation and Maintenance are necessary and appropriate: An often cited long-standing deficiency with stormwater management in Pennsylvania has been the lack of clear benchmarks and requirements for operation and maintenance of stormwater infrastructure. The language proposed in PAG-2 successfully addresses such concerns as within the ability of the permit structure. (3)

Response: The Department acknowledges your comment.

28. Comment: Requirements proposed in Part C.8. Phased Projects should include additional requirements: 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 that 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.

And, although the draft PAG-2 references requirements in 25 Pa. Code § 102.4(b) for spoil and borrow areas, the draft permit does not set forth stabilization requirements, such as covering, covering within a given timeframe (e.g. 4 days) and there is no expressed required protection of existing storm drains in the draft permit. These kinds of standards would provide the certainty currently lacking in the permit and necessary for its next generation expression – but none are present. (3)

Response: The Department disagrees. Site conditions will dictate the amount of disturbance that is appropriate for each project. The Department has established requirements in Chapter 102 in both 102.4(b)(4)(i) and 102.8(b)(6) which require minimization of the extent and duration of the earth disturbance activity and minimization of land clearing and grading. Based upon the site conditions, the Department has the discretion to determine when it is necessary to require individual permits. The Department agrees that all the appropriate requirements contained in Chapter 102 are applicable to spoil and borrow areas and has made this change in the permit.

29. Comment: The draft PAG-2 should cite or encourage LID/ESD site planning techniques: The proposed PAG-2 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 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 stormwater¹. However, PADEP'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 approach². (3)

Response: The Department agrees that LID and environmental site design (ESD) should be addressed in the permit conditions and changes that are consistent with 102.4(b)(4) and 102.8(b) have been made to articulate this encouragement.

30. Comment: PAG-2 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: A large body of research and case studies has documented the value of vegetated riparian buffers at protecting and improving stream health. To that end, we believe that all PAG-2 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.

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. (3)

Response: The Department disagrees. Neither the Pennsylvania Chapter 102 nor the federal regulations mandate or provide authority for such provisions in this permit.

31. Comment: The effluent limitations established in Part A.1.a. are insufficient: The 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. (3)

Response: The commentator's assumption that because a BMP or a combination of BMPs are included in a plan that the BMPs included in plans are automatically acceptable is incorrect. The

¹ USEPA, Reducing Stormwater Costs Through LID Strategies and Practices. EPA 841-F-07-006 (December 2007).

² National Research Council, Committee on Reduction of Stormwater Contributions to Water Pollution, *Urban Stormwater Management in the United States*. 2008.

permit requires that the applicant provide a demonstration that a BMP or combination of BMPs will meet the regulatory obligation of narrative performance-based effluent limitations. Pennsylvania's approach in this permit is consistent with federal requirements in the Construction General Permit Effluent Limitation Guideline (ELG). The ELG requires that standards be established based on the performance of treatment and control technologies. The rule requires all construction site owners and operators to implement a range of erosion and sediment control and preventative BMPs to reduce pollutants in stormwater discharges. Further, failure of BMPs is not in relation to the adequacy of that BMP, but rather due to maintenance and other considerations and therefore should be addressed as part of the compliance process.

32. Comment: In Section 3.b.14 and Part C.2.e and 5.d which addresses TMDL considerations for E&S and PCSM permits are vague and non-enforceable: 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.

The State of Minnesota's³ language and interpretation of case law is consistent with the CWA and case law⁴ which states that an NPDES permit cannot be issued if there is a TMDL WLA for a particular pollutant, and that pollutant will be added as a result of the permitted activity, unless there is demonstrated that there is pollution allocation still available in that waterbody. Specifically: "No permit may be issued: ...to a new source or a new discharger if the discharge from its construction or operation will cause or contribute to the violation of water quality standards", unless the applicant can demonstrate that there is sufficient pollution allocation available to accommodate its new discharges, and that existing dischargers to that water-body are subject to compliance schedules designed to bring the water-body into compliance with water quality standards."⁵ In other words, any proposed activity which will discharge pollutants identified in a WLA for a TMDL, such as sediment, phosphorus, and nitrogen cannot be issued without demonstration of a no-net increase requirement.

PADEP's proposed PAG-02 essentially minimizes the increase in loads from land conversion activities. For example, consider a new residential development in a green field setting that must acquire a Chapter 102 permit. In this case, the reduction in pollutant loads via the erosion and sedimentation control standards in Chapter 102 represent a decrease in the net increase in load during construction. As a result, no progress toward meeting local or Bay TMDL WLAs has been made but simply a reduction in the rate in which loads have increased, albeit temporarily in this case.

A similar argument can be made for the post-construction scenario. PADEP has implied that a no net increase in pollutant loads is achieved by managing for the 2-year, 24-hour storm event.

³ Minnesota Pollution Control Agency, Linking TMDLs and NPDES-Permitted Stormwater: Minnesota's Experience. <http://swrcb2a.waterboards.ca.gov/pub/rwqcb2/TMDL-WEF/7b.pdf>.

⁴ Friends of Pinto Creek v. United State Environmental Protection Agency. 504 F.3d 1007 (9th Cir. 2007)

⁵ 40 CFR § 122.4(j)

Under this option, it was conventional thinking that if flows were held below the two-year level that erosion would be minimized. However, some research has indicated that this criterion frequently does not protect channels from downstream erosion and may actually exacerbate erosion since banks are exposed to a longer duration of erosive bankfull and sub-bankfull events.^{6,7,8,9} And, as development continues within a watershed that is managed under 2-year 24 hour storm event criteria, the bankfull event that causes streambed and bank erosion actually can decrease below the 2-year threshold. If such is the case, then a no net increase is not achieved due to erosive flows causing increased sediment and phosphorus loads downstream.

As a result of this deficiency, we believe the TMDL provisions presented in the draft PAG-2 are insufficient to satisfy the requirements of the Chesapeake Bay TMDL offsetting of new or increased loads within the watershed. (3)

Response: The Department disagrees that the language is either vague or ambiguous, or does not comply with the law. PAG-02 has used language that is consistent with federal requirements and guidance provided in meeting TMDLs for stormwater discharges.

33. Comment: Part C.17 Public Notice of NOIs including and Offset or Trade is premature: As you are well aware, PADEP is currently undergoing a stakeholder workgroup process to develop an initial policy on the potential use of stormwater volume offsets to meet PCSM volume standards set forth in Title 25 Pa. Code Chapter 102.8. While the efforts of the workgroup are nearing the submittal of a draft policy by PADEP for review, a significant amount of effort remains until the policies anticipated adoption, which according to PADEP, is sometime in the summer of 2013.

Several aspects of the inclusion of Part C.17 raise some concerns. For one, the section uses the terms “offset” and “trade” without definition. Second, by invoking the term “trade” PADEP insinuates an association with the existing statewide nutrient and sediment trading program. Third, the policy is not final and has not even been presented in draft form to the stakeholder workgroup. Furthermore, PADEP has recently indicated that the policy may become final sometime in the summer of 2013.

⁶ MacRae, C. 1993. An alternate design approach for the control of instream erosion potential in urbanizing watersheds. Pp. 1086-1091. In Proceedings of the Sixth International Conference on Urban Stormwater Drainage. Niagra Falls, Ontario.

⁷ Marsalek and Torno (eds.); MacRae, C. 1996. Experience from morphological research on Canadian streams: is control of the two-year frequency runoff event the best basis for stream channel protection? In Effects of Watershed Development and Management on Aquatic Systems. L. Roesner (ed.). Engineering Foundation Conference. Proceedings. Snowbird, UT. August 4-9, 1996. pp. 144-160.

⁸ McCuen, R. and G. Moglen. 1988. Multicriterion stormwater management methods. Journal of Water Resources Planning and Management. (114)4.

⁹ Brown, T. and D. Caraco. 2001. Channel Protection. Water Resources IMPACT. American Water Resources Association, Volume 3, Number 6, pp 16-19.

Given the above, clarification/definition of the terms employed under Part C.17 is necessary. And, importantly, the section should indicate that the offset or trade option will be made available only after the final adoption of the policy. (3)

Response: In response to the comment, the Department has removed the term “trade” from the condition. However, the Department disagrees that it is premature to include requirements related to offsetting and in fact believes that a condition included in this permit for providing an opportunity for public notice is a positive requirement and will enable use of the offsetting process once the policy is finalized.

34. Comment: The Draft Permit should include a condition relating to mandatory riparian buffers (4)

Response: The Department disagrees. The mandatory provisions related to riparian buffers are established in 25 Pa. Code § 102.14 and are only applicable in certain conditions related to special protection waters. Since PAG-02, as a general permit, cannot be used in special protection waters, it is not appropriate to require mandatory riparian buffers or mandatory riparian forest buffers.

35. Comment: The Draft Permit should include a condition requiring the implementation of antidegradation requirements in Exceptional Value and High Quality Waters. (4)

Response: The Department disagrees. PAG-02, as a general permit, cannot be used in special protection waters.

36. Comment: Discharges to impaired waters and to waters for which there is a Total Maximum Daily Load (TMDL) should not be eligible for a general permit and should instead be required to apply for an individual permit (4)

Response: The Department disagrees. Consistency with the terms and conditions of any applicable wasteload allocation in a given TMDL can be met through BMPs meeting performance standards as specified in the permit, and may be implemented in the context of a general permit.

37. Comment: NOIs that propose an offset or trade of stormwater or riparian forest buffers should have a sixty day public notice period, and all other NOIs should have a thirty-day public notice period (4)

Response: The Department disagrees. Neither the federal nor state regulations require public notice of NOIs.

38. Comment: Part C.16 of the Draft Permit is inappropriate in a NPDES general permit for stormwater discharges associated with construction activities, and should be omitted. (4)

Response: The Department disagrees. This condition provides consistency between PAG-02 and PAG-13 that establishes the reliance of MS4s on the Commonwealth's program to meet MCM 4 and part of MCM 5. In addition, the Department incorporated this language at the request of EPA Region 3.

39. Comment: Cover Page, paragraph 3. It may not be pursuant to this permit if approval for coverage exceeds the expiration of this permit. (5)

Response: The Department acknowledges the comment and agrees that this revised, amended version of PAG-02 is valid for five years. The Department has modified language in PAG-02 to clarify this requirement so that it more closely reflects the language contained in the EPA Construction General Permit that ongoing construction projects must comply with the terms and conditions under any renewed or re-issued general permit.

40. Comment: Please note that certain discharges of stormwater associated with Oil and Gas earth disturbance are required to obtain an NPDES permit. See 40 CFR 122.26(a)(1)(iii). While PAG2 need not cover such discharges, another NPDES permit must apply. (5)

Response: The Department acknowledges the comment but does not believe modification of this permit is necessary.

41. Comment: As written, the definitions are circular – a person is an operator and an operator is a person. (5)

Response: The definitions provided are consistent with those contained in 25 Pa. Code § 102.1.

42. Comment: Section 3b should include the prohibited discharges from the ELG, found in 40 CFR 450.21(e). (5)

Response: The Department agrees and has added language to this section regarding prohibited discharges.

43. Comment: Section 3.b (13) addressing the analysis for demonstrating that the activity will not cause or contribute to an existing impairment. Specifically who will be responsible for completing the analysis; what criteria are used; and when will this analysis be required to be performed, either before or concurrent with the NOI submittal? (5)

Response: The applicant must provide their analysis with the submittal of an NOI. The criteria to be utilized are the criteria for water quality compliance with the Pennsylvania regulations and as demonstrated through use of the Pennsylvania Stormwater BMP Manual Worksheets 10-13 or an equivalent or better analysis. The reviewing entity (the Department or a delegated district) will determine if this analysis has been provided and is adequate prior to authorization of the permit.

44. Comment: Section 3.b(14) addressing compliance with the conditions and assumptions of applicable TMDLs. Are conservation districts entirely familiar with the requirements of a TMDL? (5)

Response: In the context of this general permit, Pennsylvania has established a program that facilitates utilization of the existing Chapter 102 regulatory framework that relies on BMPs to achieve compliance with most TMDLs. County conservation districts, and if necessary, in consultation with the Department, will evaluate the E&S and PCSM Plans to determine whether they demonstrate the performance standard of no net change in volume, rate or water quality using the 2-year/24 hour storm event, meadow or better condition as the pre-existing land use. This is the performance standard that must be met to demonstrate that the proposed NPDES Construction Permit stormwater discharges will not cause or contribute to a violation of water quality standards. For waters other than special protection, the Department presumes that if there is no net change in stormwater runoff volume, rate or quality as described above, that the discharges are consistent with the requirements of the TMDL.

45. Comment: Section 3.b (14) Who determines consistency with the TMDL? (5)

Response: Consistency will be determined by the county conservation districts and/or regional Department offices during their review of the permit.

46. Comment: Section 3.b(15) addressing written consent from MS4 and CSOs. Will DEP require this information and who is responsible to determine if this condition is met? The draft permit is unclear. (5)

Response: The Department disagrees that this permit condition is unclear. The Department has included this provision within the NOI to ensure that the applicant has contacted and received the consent of the MS4 or CSO operator to discharge into their system. Since this is a condition of the permit and is included as a component of the application, the reviewer of the NOI is responsible for determining that the applicant has demonstrated that this consent has been obtained.

47. Comment: Section 3.b(15), addressing written consent from MS4 and CSOs. Will a form be made available? (5)

Response: The Department does not feel that a form is necessary at this time.

48. Comment: Part B.1a(1) EPA has interpreted this paragraph and the permit cover page to be consistent with the requirements of the Clean Water Act: that this permit is effective only for a term of 5 years. (5)

Response: The Department acknowledges the comment and agrees that this revised, amended version of PAG-02 is valid for five years. The Department has modified language in PAG-02 to clarify this requirement so that it more closely reflects the language contained in the EPA

Construction General Permit that ongoing construction projects must comply with the terms and conditions under any renewed or re-issued general permit.

49. Comment: Bullet 5: Addressing “location and availability of documents.” (5)

Response: All the documents are available online, but the Department recognizes that in the past there have been issues with the links that did not allow users to access all the documents in one place. The Department has addressed this technical issue and all documents are now located together in the eLibrary.

50. Comment: EPA requests to see all applicable forms when they become available prior to the finalization and reissuance of the permit. (5)

Response: The Department will provide links to the forms.

51. Comment: EPA recommends adding requirements to ensure that personnel working on a site receive proper training prior to commencement of the earth disturbance or pollutant generating activities. (5)

Response: The Department acknowledges the comment and has added relevant language to various subparagraphs of Part C of the permit.

52. Comment: Section 3c, the last sentence has to do with permit renewal, which is different than permit coverage renewal. (5)

Response: The Department feels this language is necessary to ensure continuity of compliance with permit terms and conditions.

53. Comment: Section 4 a(2), reference the relevant regulatory citation 102.8(k). (5)

Response: The Department agrees and a regulatory citation has been added.

54. Comment: Part A, Section 2(a). Is the form developed by the Department available for EPA review? (5)

Response: Yes, the form “Visual Site Inspection Report” (3150-FM-BWEW0083) is available for EPA review.

55. Comment: Part A, Section 2(a). The current permit specifies requirements for the inspection reports, including a summary of conditions and date/time and signature. These are very useful for enforcement. Consider keeping these requirements. (5)

Response: The Department agrees and has reinserted relevant language.

56. Comment: Part B, Section 1 a (1). CWA regulations allow coverage under a general permit without an NOI (or a new NOI in this case) under 122.28(b)(2)(v). However, the regulations require that DEP make the findings required in the regulation and that public notice be given of the determinations. (5)

Response: Because in Pennsylvania the Department requires the submission of an NOI in order to qualify for coverage under this general permit and publishes public notice of authorizations for coverage under the permit, the Department did not make any change in response to this comment.

57. Comment: Part B, Section 1 a (1). EPA interprets that this paragraph and the permit cover page are consistent with the requirements of the CWA: that this permit, and coverage under this permit, is effective only for a term of 5 years. After this permit expires, ongoing construction projects will need coverage under a new permit. The term of the permit is separate from any term of approval for coverage granted by PA. When PA grants a person coverage for 5 years, the coverage will be under this permit only during the time before the permit expires (exception-permit is administratively extended pending reissuance, in which case the permit will continue to apply to existing permittees only). After expiration, coverage can only continue under a new permit. (5)

Response: The Department acknowledges the comment and agrees that this revised, amended version of PAG-02 is valid for five years. The Department has modified language in PAG-02 to clarify this requirement so that it more closely reflects the language contained in the EPA Construction General Permit that ongoing construction projects must comply with the terms and conditions under any renewed or re-issued general permit.

58. Comment: Part B, Section 1 b (4). The last sentence is subjective, recommend removing “which could, in any way, substantially affect the quality and/or quantity of stormwater discharged from the activity.” Permittee should not be able to decide what constitutes the need for PADEP notice. (5)

Response: The Department disagrees. This language should remain.

59. Comment: Part C, Section 11 Infiltration BMPs. The effluent guidelines require minimization of compaction throughout the sites, not just where infiltration BMPs are located 450.21(a)(7). (5)

Response: The Department agrees and has added language to the permit to reflect the comment.

60. Comment: Part C, Section 14 (c) Long-Term Operation and Maintenance. Is the State responsible for PCSM BMP maintenance until the transfer of property occurs? (5)

Response: Yes, the state would be responsible for the long-term operation and maintenance of PCSM BMPs on state owned lands until the land is transferred.

List of Commentors

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- 2) Patrick L. Naugle, Acting Chairman Adams County Conservation District Board of Directors
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- 3) Harry Campbell, Senior Scientist
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- 4) Brian Glass
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- 5) Evelyn S. MacKnight, Chief NPDES Permits Branch
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