

12SW Modification - General Permit for Industrial Stormwater Discharges Fact Sheet

**Permit Modification Fact Sheet
for the General Permit for
Discharges from Stormwater Associated with Industrial Activities
Discharge Permit Number 12-SW-A, NPDES Permit Number MDR00**

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1.0 BACKGROUND

When the Chesapeake Bay TMDL was published in December 2010, each state in the Chesapeake Bay watershed had to develop a plan for how they would achieve the pollution load reductions required by the TMDL, called a Watershed Implementation Plan or WIP.

Maryland's WIP included several required actions, including specific actions for quality and quantity control of urban stormwater. The urban stormwater WIP goals were to be implemented through Municipal Separate Storm Sewer (MS4) NPDES permits via a 20% reduction in effective impervious surface (restoration). The 12SW permit supported the WIP by requiring certain facilities to perform restoration of impervious surfaces consistent with the MS4 permits issued by the Department. Both permits address stormwater concerns related to both the Chesapeake Bay and local TMDLs through volume or quantity control for all facilities through restoration of impervious surfaces.

2.0 Progress

The restoration of impervious surfaces is addressed in Part III. A. of the 12SW permit. The 12SW requires that a specific subset of facilities in the Chesapeake Bay Watershed complete restoration requirements. The requirement is to restore 20% of untreated impervious surfaces with the options specified in Part III. A. 1. C. These facilities were identified in the permit as facilities that were located in urban areas (within an MS4 jurisdiction), were larger than 5 acres, and were not owned or operated by an MS4 jurisdiction. MDE knew that the facilities owned or operated by an MS4 jurisdiction were already subject to restoration requirements under their MS4 permit. Of the 1,006 facilities currently subject to the 12SW permit, 299 or approximately 29% are now required to complete restoration.

MDE pulled data from the existing 299 registrations requiring restoration. The data below shows that permittees have made good progress to date. There were many facilities that have met the restoration requirements of the permit, which represents 22% of the operators. What MDE has also now identified is that 87% of the 299 facilities require less than 3 acres of restoration of untreated impervious surfaces (See Figure 1).

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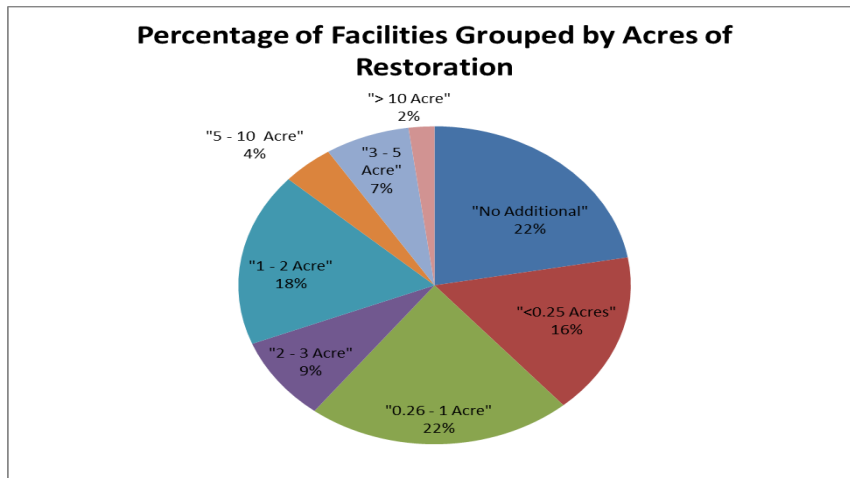


Figure 1 - Breakdown Percentages of the Number of Facilities Categorized by Amount of Restoration Required.

The chart below (See Figure 2) shows restoration acres by category. It shows that over 59% of the benefit to the Bay comes from those 13% of facilities (refer to above chart) with over 3 acres of restoration. Comparing the larger universe of 1,006 sites covered by the permit, this represents that less than 5% of the operators are responsible for nearly 60% of the restoration efforts benefiting the Bay. Therefore, a large percentage of the burden and cost resides with a small percentage of the operators.

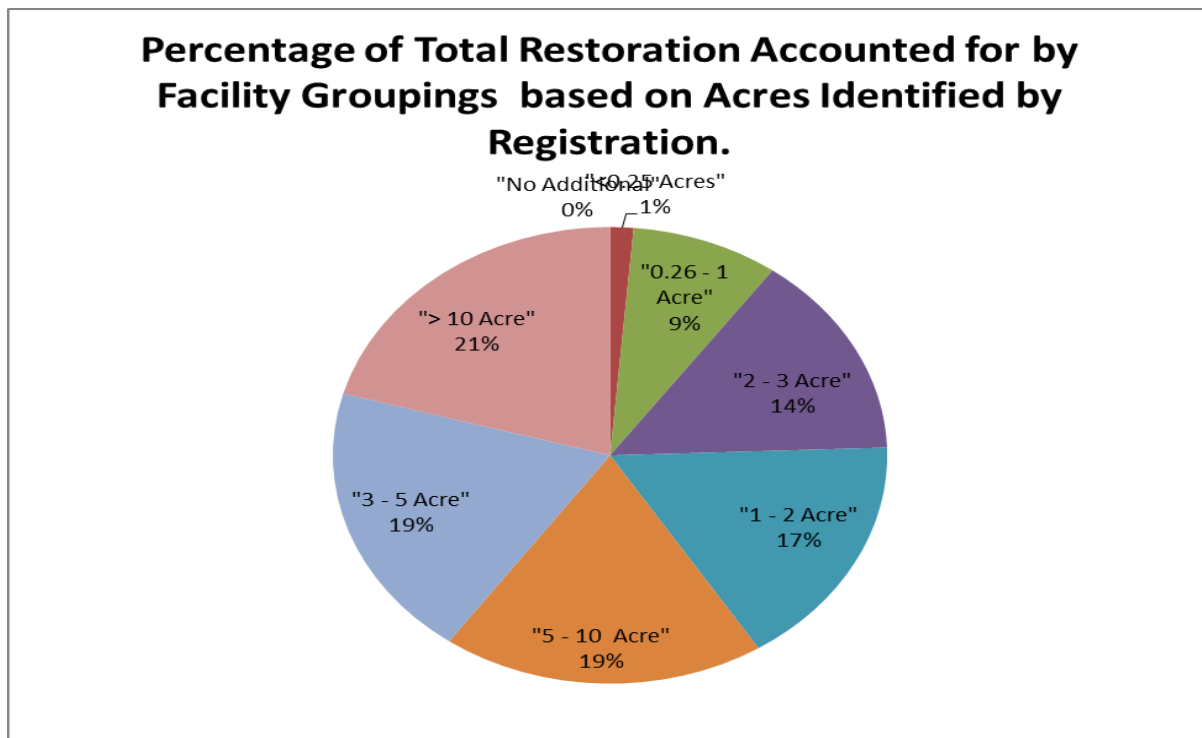


Figure 2 – Breakdown Percentages of the Restoration Acreage Totals Categorized by Amount of Restoration Required

2.1 Restoration On-Site

The permit required restoration to be completed with a preference for work on the property of the permitted facility operator. MDE envisioned that if work to achieve the restoration on-site was “infeasible” that there would be plenty of opportunities available off-site by working with the local jurisdiction. The off-site provision was specific to nutrient reduction related to the Chesapeake Bay TMDL, addressing untreated impervious surfaces at the facility. The same concept is not applied to toxics, metals, oil or other pollutants addressed by the permit, which must be completed on-site.

However, since the permit was initiated, MDE has gained knowledge from permittee experiences. Indeed, some operators have been able to find projects off-site, by working through a jurisdiction. However, MDE is also aware that certain jurisdictions already were addressing impervious surfaces due to their own MS4 permit requirements, and due to that effort, the opportunities for industry were limited.

The term infeasible was consistent with the definition EPA used in its national construction general permit. In retrospect, the concept of infeasible at an industrial site (concerning industrial stormwater) becomes less clear, since certain impervious surfaces are in place for pollution reduction. The 12SW permit actually encourages adding impervious surfaces in certain cases, either to cover material or to allow for better good housekeeping (where oil or gasoline are stored or dispensed for instance)

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or to reduce sediment when moving equipment or stored items at the property (scrap yards or automobile salvage yards). MDE also knows that site constraints such as steep slopes or hot spots may limit the use of practices for nutrient reduction at a facility. Consequently, MDE now understands that favoring on-site improvements vs off-site improvements may have been overly restrictive.

2.2 Incorrect Reference

We've identified that a reference to Part III.A.1.b in this section (Part III.A.1.d), should have referred to Part III.A.1.c. This typographical error is fixed in this modification as well.

2.3 Restoration Implementation Completion Dates

The existing 12SW permit provides implementation deadlines for compliance. The date for completion for most operators is January 1, 2019; however for any new operators it is 4 years from their registration date. At this time, MDE has received an update from most facilities on their progress to achieving the restoration requirement. What MDE is finding is a mix of successful permittees that have completed their restoration requirement (over 30%) and permittees that may need additional options or time to complete planned restoration work. Delays for the completion of restoration are due to the issues explained above.

3.0 Proposed Changes

The existing 12SW permit has disproportionate impacts on a small number of facilities (approximately 5% completing most of the work). This wasn't envisioned by MDE when the permit was written. The modification of the 12SW permit proposes to revise the final completion date for restoration practices and allow trading as an option for permittees to achieve the restoration requirement.

3.1 Allow Trading

The reasons MDE is addressing trading now include:

- Trading regulations have recently been drafted and proposed within the state (COMAR 26.08.11). (The final trading regulations will be published in the Maryland Register on June 25, 2018 and will be final 10 days later (July 5, 2018). Use of trading is envisioned as an option available for MS4 permittees to comply with their restoration requirement. The MS4 jurisdictions with trading options in their permit, who also have 12SW coverage (i.e. DPW, transfer stations or landfills) within their jurisdiction, would have the option to use trading to meet the Bay TMDL component of their restoration requirement under their MS4 permit. Similarly, industrial permittees will be provided with trading as an option in the 12SW permit for their industrial activity. To be fair, MDE is allowing trading in the 12SW permit so that those operators in jurisdictions without an MS4 permit should have access to the trading option as well.

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- When MDE drafted the 12SW, there were many requests for use of trading or a fee-in-lieu option, but no mechanism to implement those alternatives. A regulation is going to become available to allow MDE to provide this option. Providing multiple options for the operators to comply with the restoration requirement can also improve the overall resulting environmental benefits.
- This modification provides a market for trading credits and a critical relief valve, especially since the 12SW permit impacts a small percentage of facilities disproportionately.
- This modification would allow facilities, who have generated a marketable credit, the opportunity to provide it to other industrial operators, or even to an MS4 jurisdiction. The current 12SW only provides that the work can be a marketable credit without the related trading option for those who want to purchase it.
- Technical challenges in implementation have slowed progress, and MDE needs to make options available to allow facilities to continue with and complete the important work of nutrient reduction.

3.2 Add Trading as an 'equivalent measure'

MDE proposes to allow trading, consistent with regulations adopted by the State, as an additional option under the 'other equivalent measures' section of the 12SW permit. If trading is being used by the operator, the registrant must provide additional reporting as required by the new regulation. The resulting requirements by the modification are listed here.

Reporting required for facilities generating a marketable credit.

- 1) Calculation of Credits (26.08.11.06(B)): You must use assessment tools consistent with the Chesapeake Bay Program modeling tools and accepted by the Department. Any assumptions or backup data used in the calculations of credits must be maintained on-site.
- 2) Procedure for Certification (26.08.11.07): Credits are not valid or tradable until placed on the Registry. The registration of the credits requires completion of a Certification and Registration Form as provided by the Department, which includes documentation that the generator either owns the property or has the permission of the landowner to install, access, and maintain the BMP. Only when that form is completed and the credits are on the registry, are they available for a trade. As a condition for the certification, the applicant and landowner must agree in writing to provide the Department, verifier, and their agents access to the BMP during the lifespan of the credit. The credit owner is required to provide additional notification if the BMP changes, or the ownership of the property changes.
- 3) Verification and Reporting Requirements (26.08.11.11): During the certification process for a credit, the Department shall state the frequency at which the credits shall be verified, which shall be no less than every 3 years. You must include this verification process in your SWPPP monitoring plans. Verification of credits generated must be performed by a State or county inspector, a professional

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engineer registered in Maryland, or a Department approved verifier. Each report prepared by an inspector or verifier in accordance with B(2) of the regulation shall include documentation that the BMP implemented continues to meet baseline compliance and that the credit generating BMP continues to be operated and maintained in accordance with the trading contract. If deficiencies exist and resulting corrective measures are needed, you must immediately implement them or jeopardize your trade. You may be required to perform additional inspections to ensure the BMP continues to perform as required.

- 4) The above calculations and permittee copies of the completed forms and correspondence with the Department must be kept onsite and available to an inspector.

For facilities satisfying their restoration requirement via a trade:

- 1) (26.08.11.07) In the event of a default in a trade contract, expiration of a credit, or suspension or revocation of a credit, the buyer using the credit remains responsible for complying with the permit. In any of these events, the permittee must update the SWPPP and inform the Department of their plan to regain compliance with the restoration requirement of the permit.
- 2) Registration of Trades (26.08.11.10) The permittee must notify the Department about each trade they are involved in by filing a form provided by the Department within 15 days after the trade, after which time the Department will update the Registry to include the registration number. The permittee must update the SWPPP to include this registration number and how this trade is used to satisfy restoration requirements.
- 3) Verification and Reporting Requirements (26.08.11.11). The permittee must notify the Department annually on the status of any trades they have initiated to meet the permit requirements.
- 4) Copies of the contract, the annual Department notification and any other correspondence with the Department regarding the trade must be kept onsite and available to an inspector.

3.3 Increase the Opportunities Where Restoration May Occur

MDE proposes, via this modification, to remove the 'infeasible' restriction for on-site work, so that facilities can work with other industrial sites, MS4 jurisdictions, or other partners consistent with the trading regulation. The modification would also allow marketable credits to be created at facilities smaller than 5 acres (facilities not currently required to complete restoration) to create a potential market of facilities where restoration can more universally be implemented.

3.4 Reset Completion Date to Allow Trading

MDE proposes to revise the restoration completion deadline, to allow trades to be generated for the facilities who will be relying on this to be compliant with the permit. Trading will not be in full effect immediately, and the time provided will allow time for trades to take place. The modification will allow for 12SW to be consistent with other

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stormwater permits as well, ensuring that all work must be completed no later than required by the TMDL and consistent with the WIP. The modification specifies a deadline of December 31, 2020, which provides a margin of safety for confirming completion results prior to 2025. The date will also be incorporated into any renewal of the permit.

4.0 Administrative Process

A notice for an informational meeting and public hearing regarding the tentative determination will be published in the Maryland Register and in newspapers throughout the state. Additionally, notices will be mailed to 12-SW interested parties and 12-SW registrants who are required to complete restoration. Also, the draft amended pages of the permit and this fact sheet will be made available for the public and operators to review and provide comments. Comments on the tentative determination will be accepted by Michael Richardson (Michael.Richardson@maryland.gov), if received within 90 days of publishing. The 60-day extension of the comment period allowed for by section 1-606 (d) (1) (ii) of the Maryland Environmental Article is being invoked to extend the usual 30-day comment period to 90 days. A public hearing will be scheduled to allow the public and impacted parties to provide public testimony. Details of the dates will be included in the public notice and in the publications.