

MARYLAND DEPARTMENT OF THE ENVIRONMENT

WATER MANAGEMENT ADMINISTRATION

**1800 Washington Boulevard, Suite 420
Baltimore, Maryland 21230**

**Response to Public Comments Regarding the 2014 General Permit for Stormwater
Associated with Construction Activity**

October 28, 2014

INTRODUCTION

The Maryland Department of the Environment (MDE) has made a final determination to reissue the State/National Pollution Discharge Elimination System (NPDES) General Permit for Stormwater Associated with Construction Activity (General NPDES Permit Number MDRC, State Discharge Permit Number 14GP) to meet federal requirements and to protect water quality.

A public notice on the tentative determination to reissue the permit was published in newspapers throughout the State of Maryland during the week of July 8th and again on the week of July 15th. It was also published in the Maryland Register. MDE held public hearing concerning the tentative determination at MDE's main office on August 12, 2013. MDE received written comments on the draft permit through the end of the public comment period on October 18, 2013. This Final Determination was published in the newspapers throughout the State of Maryland on October 30 and 31, 2014, and will be effective January 1, 2015.

A categorized summary of significant comments and MDE's responses are listed below. The Department has made its best effort to review and consider each comment received and has created this written document to address the significant comments. The following comment response document includes full or excerpted comments received by MDE. Where a commenter made similar comments in writing and at the public hearing, such comments are summarized only once in this document. Comments from different persons on similar subjects are grouped together. Copies of the complete comments received will be made available upon request. MDE's response to each group of categorized comments is shown below the comments in the "MDE Response" area (in italics). The comments received on the draft permit and the associated responses have in some cases resulted in changes to the final permit. Where MDE made changes, this is noted in the "Change in Final Determination" area (in italics).

Comment Subject	Posting notice of permit coverage
Commenter	Comment
U.S. Environmental Protection Agency Region III	Add language stating that permittee must post a notice of permit coverage "at a safe, publicly accessible location in close proximity to the project site."

<i>MDE Response</i>	<i>MDE agrees that the requested notice will assist the public in determining whether a site is permitted and who is responsible for the site at minimal cost to the permittee.</i>
<i>Change in Final Determination</i>	<i>MDE has inserted the requested revision as Part IV.C.2.</i>
Comment Subject	Compliance with Maryland's lawn fertilizer law
Commenter	Comment
U.S. Environmental Protection Agency Region III	Add language referencing Maryland's new lawn fertilizer law that includes certification.
<i>MDE Response</i>	<i>MDE agrees that the requested language is appropriate to notify permittees of their obligation to comply with the fertilizer law.</i>
<i>Change in Final Determination</i>	<i>A reference to the fertilizer law has been added at Part III.E.2.</i>
Comment Subject	Compliance with the Endangered Species Act
Commenter	Comment
U.S. Environmental Protection Agency Region III	Add requirement that permittee demonstrate, through supporting documentation contained in the Stormwater Pollution Prevention Plan (SWPPP), that the site meets the requirements of the Endangered Species Act.
<i>MDE Response</i>	<i>Federal regulations at 40 C.F.R. § 122.49, which require compliance with the Endangered Species Act, are not applicable to State NPDES programs as per 40 C.F.R. § 123.25. However, State listed rare, threatened, and endangered species habitat should be considered in the development of the erosion and sediment control plan in accordance with section A-4 of the 2011 Maryland Standards and Specifications for Soil Erosion and Sediment Control. Local approving authorities may refer projects to the State Department of Natural Resources where further review for impacts to rare, threatened, or endangered species is necessary.</i>
<i>Change in Final Determination</i>	<i>MDE has added language in Part III.B.3 requiring permittees to consider State listed rare, threatened, and endangered species habitat in the design of the erosion and sediment control plan in accordance with the 2011 Maryland Standards and Specifications for Soil Erosion and Sediment Control and contact the appropriate approval authority where such resources are identified.</i>
Comment Subject	Reduction in length of public notification period
Commenter	Comment
U of MD School of Law	The proposed 14-day notice and comment period violates the Clean Water Act's public participation requirements. The proposed 14-day notice and comment period

for Waterkeepers ¹	renders meaningful review and comment practically impossible.
Chesapeake Bay Foundation	The public notice and comment period must be at least 30 days, to provide the public adequate time to obtain and review Erosion and Sediment Control Plans, Stormwater Management Plans, and provide meaningful comment. Projects should receive a final erosion and sediment control plan and stormwater management plan before a 30 day public notice and comment period begins. Otherwise, there would be no way for a person to support his/her request for the site to obtain an individual permit as specified under Part II.B.3, which requires a person to provide a “detailed, written explanation as to why the ESC plan fails to meet State erosion and sediment control or stormwater management standards.” Even if the site has approved final plans, obtaining and reviewing such plans is virtually impossible to do in 14 days.
Brent Walls, Potomac Riverkeeper, at the public hearing	Opposes change from 30 days to 14 days for public review and comment. Clarify if these are business or calendar days.
MDE Response	<p><i>MDE disagrees with the comment that the proposed 14 day notice period violates the Clean Water Act (“CWA”). The CWA requires MDE to provide notice of and an opportunity for a public hearing on an application for an NPDES permit. 33 U.S.C. § 1342. The Seventh Circuit Court of Appeals in Texas Indep. Producers & Royalty Owners Ass’n v. EPA, 410 F.3d 964, 977-78 (7th Cir. 2005), held that the statutory language did not address NOIs or Stormwater Pollution Prevention Plans (“SWPPPs”) and upheld the EPA’s general permit for discharges of stormwater associated with construction activity even though it did not provide for public review and a public hearing on the NOI and SWPPP. MDE agrees with the Seventh Circuit that the public has the opportunity to comment on the general permit and that public hearings on each individual NOI and E&SC plan would undermine the improved efficiency intended in the general permit program.</i></p> <p><i>Although not required, the 2014 General Permit provides a period of 14 calendar days during which MDE will not act on an NOI to allow the public to review the erosion and sediment control plan and request that MDE require an individual permit. (Part II.B.2). This NOI public review and comment period does not violate the CWA and has the effect of not delaying projects unnecessarily. The NOI review period is similar to EPA’s 2012 Construction General Permit, which requires NOI submission at least 14 days prior to the planned start of earth disturbance. See National Pollutant Discharge Elimination System General Permit for Discharges from Construction Activities (February 16, 2012), at pages 5-6, available at http://water.epa.gov/polwaste/npdes/stormwater/upload/cgp2012_finalpermit.pdf. In practice, MDE received no more than a few requests for individual permits on proposed NOIs in the last five years.</i></p>

¹ The University of Maryland School of Law submitted comments for a group of organizations referred to in this document as Waterkeepers. The full list of commenting organizations is: Waterkeepers Chesapeake, Inc., Anacostia Riverkeeper, Assateague Coastkeeper, Baltimore Harbor Waterkeeper, Chester Riverkeeper, Choptank Riverkeeper, Gunpowder Riverkeeper, Lower Susquehanna Riverkeeper, Miles/Wye Riverkeeper, Patuxent Riverkeeper, Potomac Riverkeeper, Sassafras Riverkeeper, Severn Riverkeeper, South Riverkeeper, and West/Rhode Riverkeeper.

	<p><i>MDE does not agree with the commenter that the Erosion and Sediment Control Plan must be final prior to the review period. MDE will not begin processing an NOI until the Erosion and Sediment Control Plan has been submitted to the approving authority (see Part II.B.1). The public can raise concerns about plans to MDE at the time they are available for review and even request that the project be required to obtain individual permit coverage for just cause. The public notification period is not a citizen's only opportunity to provide information to MDE that may lead MDE to require an individual permit. If a citizen alerted MDE to a concern after issuance of General Permit coverage, the WMA Compliance Program handles these as complaints and sends inspectors to investigate based on an assessment of the nature of the complaint. MDE has the authority to terminate General Permit coverage and require individual permit coverage for cause at any time.</i></p>
Change to Final Determination	<p><i>MDE will retain the 14 day public notification period for the NOI and Erosion and Sediment Control Plan. MDE is also changing language in Part II.C, II.E, and II.H to clarify that the NOI is not an application for a permit.</i></p>
Comment Subject	Public access to NOI data during public notification period
Commenter	Comment
U of MD School of Law for Waterkeepers	<p>MDE must improve its NOI Database Search Utility to facilitate public access.</p>
MDE Response	<p><i>This is not a comment on the proposed general permit itself. In November 2013, MDE installed upgrades to the software that runs the NOI Database Search Utility, and this likely fixed some problems for users. The commenter states that one cannot search by a range of dates. In fact, one can use the Comment Deadline Start-End query. See Instructions for NOI (NOTICE OF INTENT) Database Search Utility for Permits for Stormwater Associated with Industrial Activity, available at http://www.mde.state.md.us/programs/Permits/WaterManagementPermits/WaterDischargePermitApplications/Documents/GPCA_NOI_Search_Instructions2.pdf. More importantly, MDE intends to put in place a new online NOI system in conjunction with issuance of the 2014 General Permit. MDE expects that the public notification database for this system will be easier to use across many operating systems and web browsers.</i></p>
Comment Subject	Numeric effluent limitations for construction sites
Commenter	Comment
U of MD School of Law for Waterkeepers	<p>MDE must impose numeric effluent limitations to adequately control stormwater pollutants.</p>
Chesapeake Bay Foundation	<p>The General Permit should require the establishment of numeric turbidity standards as an effluent limit for runoff leaving construction sites and should also prohibit visible off-site discharges.</p>
Maryland State Builders	<p>Opposes requests that this permit be redrafted to include numerical limits on sediment, Nitrogen and Phosphorus. After extensive investigation, the U.S. EPA</p>

Association, NAIOP – Maryland Chapters	earlier this year withdrew a similar standard on a nationwide basis because the agency could not demonstrate that the standard was technically feasible.
<i>MDE Response</i>	<i>MDE disagrees that numeric effluent limitations are required under the Clean Water Act to be included in the 2014 General Permit. EPA initially included numeric effluent limitations in the Effluent Limitations and Guidelines for the Construction and Development Point Source Category at 40 C.F.R. Part 450. EPA subsequently stayed these numeric limits while it conducted extensive review of comments and data. Effective May 5, 2014, EPA withdrew the numeric limitation but has reserved that portion of the regulations for potential revisions should EPA decide to propose and promulgate additional effluent limitations guidelines and monitoring requirements in the future. 79 Fed. Reg. 44 (March 6, 2014). MDE will continue to monitor EPA’s activities on numeric effluent limitations for construction sites. The 2014 General Permit continues to require action after observation of increased turbidity in receiving waters at Part IV.B.1.g.</i>
Comment Subject	BMP specifications and storm frequency
Commenter	Comment
U of MD School of Law for Waterkeepers	MDE must improve its BMP specifications to account for changes in storm frequency due to climate change.
<i>MDE Response</i>	<i>It is beyond the scope of the 2014 General Permit to incorporate requirements based on evolving scientific research on the effects of climate change on storms. Erosion and sediment control Best Management Practice (“BMP”) requirements in Maryland are set in the Standards and Specifications for Soil Erosion and Sediment Control. See 2011 Maryland Standards and Specifications for Soil Erosion and Sediment Control (December 2011), available at http://www.mde.state.md.us/programs/water/stormwatermanagement/program/soilerosionandsedimentcontrol/pages/programs/waterprograms/sedimentandstormwater/erosionsedimentcontrol/esc_standards.aspx. No specific data on the effects of storm frequency on erosion and sediment control BMPs were presented in the comment. MDE notes that Attachment 34 to the commenter’s submitted comment document regards permanent stormwater BMPs, not erosion and sediment control BMPs.</i>
Comment Subject	Efficacy of BMPs
Commenter	Comment
U of MD School of Law for Waterkeepers	BMPs cannot ensure effective sediment reduction.
<i>MDE Response</i>	<i>Proper use of recommended BMPs can significantly reduce the amount of sediment likely to leave a construction site during a typical storm event (where the 2011 Standards and Specifications specify the size of storm event BMPs must be designed to accommodate, it is for at least the 2-year, 24-hour storm). Other controls and</i>

	<p><i>treatment options may be added to the standards and specifications in the future. The 2014 General Permit retains the requirement that sites having significant releases of sediment reevaluate their plans with the involvement of the erosion and sediment control enforcement and plan approval authorities (see Part IV.B). This requirement is triggered should sediment leave the site despite the installation of appropriate BMPs.</i></p>
Comment Subject	Public Access to Self-Inspection Reports
Commenter	Comment
U of MD School of Law for Waterkeepers	<p>MDE should improve public access to self-inspection reports. MDE should revise the Draft Permit to require site operators to regularly submit self-inspection reports to MDE. This requirement will allow MDE to ensure that inspections are being performed and MDE will have reports on hand to be made available to the public. Ideally, operators would transmit these reports electronically through the online system discussed above, where the public could easily access the reports. ...the 2012 MDE Enforcement and Compliance Report shows that, of 12,970 sites covered by a general permit for construction stormwater, only 1,698 sites (13%) were inspected by MDE. Thus, MDE does not inspect the vast majority of construction sites. Due to limited inspection resources, MDE can only satisfy its obligation to ensure compliance with the General Permit by reviewing self-inspection reports submitted by operators of construction sites.</p>
<i>MDE Response</i>	<p><i>Part III.B of the 2014 General Permit states that self-inspection reports are public records. Interested parties may request access to them. MDE does not have the resources at this time to create an online system to handle every self-inspection report for the more than 8,000 permittees under the General Permit (number of permittees based on MDE's NOI database). MDE notes that the commenter has quoted information from the Stormwater Management and Erosion & Sediment Control portion of the 2012 Enforcement and Compliance Report, which includes sites less than an acre in size. These sites are required by State law to have an approved erosion and sediment control plan, but are not required to obtain General Permit coverage. Inspection and enforcement activities regarding the General Permit are instead included in the Discharges – Surface Water portion of the Enforcement and Compliance Report. See 2012 Annual Enforcement and Compliance Report, pages 116-19, available at http://www.mde.state.md.us/aboutmde/DepartmentalReports/Documents/FY12AnnualEnforcementReport.pdf. It is true that MDE inspects only a portion of the General Permit sites each year, but sets a priority on larger sites and those with complaints or known compliance issues. MDE does not believe creating a blanket permit requirement to submit self-inspection reports at all times would be as valuable for compliance and enforcement efforts as are targeted inspections and requests for documents (through authority already incorporated in the permit) based on MDE's enforcement priorities.</i></p>
Comment Subject	MDE must review plans
Commenter	Comment
U of MD School of Law	<p>The CWA requires MDE to review every application for coverage under the General Permit and associated plans to ensure that applicants' proposed BMP effluent</p>

for Waterkeepers	limitations will prevent WQS excursions and comply with all applicable Total Maximum Daily Load (“TMDL”) wasteload allocations. Since each applicant's Erosion and Sediment Control ("ESC") plan and Stormwater Management ("SWM") plans specifies BMP effluent limitations for the particular construction site, MDE must review those plans to fulfill its CWA obligations.
<i>MDE Response</i>	<p><i>MDE believes its system of requiring plan approval by authorities designated in State law is compliant with the CWA. The CWA requires that discharges comply with applicable technology-based and water quality-based effluent limitations. See 33 U.S.C. § 1311(b). The technology-based effluent limitations for discharges of stormwater associated with construction activity are set forth at 40 C.F.R. § 450.21. These limitations are either included in the 2014 General Permit (Part III.A.3, IV.A.1) or are incorporated by reference to the State’s sediment control law (Part II.B.4). Federal regulations allow a State to incorporate the requirements of a qualifying State sediment control program into the NPDES permit for construction activity by reference. See 40 C.F.R. § 122.44(s). Under the 2014 General Permit, a permittee must obtain approval of an ESC plan and a SWM plan from the appropriate approval authority in accordance with State law and regulations. MDE regulations require the approving authority to review the ESC plan according to the criteria of the 2011 Maryland Standards and Specifications for Soil Erosion and Sediment Control (2011 Standards and Specifications). COMAR 26.17.01.08A(1). As set forth in the Final Determination Fact Sheet, each technology-based effluent limitation is addressed in the language of the permit itself, unless it is already required by the MDE sediment control regulations and Standards and Specifications. Since some sites operate under plans approved under the 1994 Standards and Specifications and are grandfathered from requirements to meet the 2011 Standards and Specifications, MDE included in the General Permit text any technology-based effluent limitation absent from the 1994 Standards and Specifications.</i></p> <p><i>MDE finds that a discharge of stormwater associated with construction activity is unlikely to cause or contribute to an excursion above water quality standards if in compliance with the law and regulations discussed above. This finding is based on MDE’s simulations using the Maryland Assessment Scenario Tool (MAST) to assess whether Maryland will meet the Chesapeake Bay TMDL targets for Total Suspended Solids. MDE conducted the assessments as part of its development of its Phase II Watershed Implementation Plan (WIP). The assessments assume a conservative level of erosion and sediment control pollutant reduction efficiencies, even though MDE’s program likely qualifies for a higher level of pollutant reduction under the model. MDE need not review each ESC and SWM plan in order to meet its obligations under the CWA. MDE has issued regulations governing the review of these plans and supervises the implementation of the sediment control and stormwater management programs by local approval authorities. COMAR 26.17.01.02; 26.17.02.02.</i></p>
Comment Subject	Discharges must comply with TMDLs
Commenter	Comment
U of MD School of Law	The permit fails to ensure that permittees’ stormwater discharges will comply with local TMDLs and the Bay TMDL.

for Waterkeepers	
Elaine Lutz, Chesapeake Bay Foundation, at public hearing	Permit should explicitly state that nitrogen and phosphorus are part of the Bay TMDL, as well as many local TMDLs, and not just sediment.
Maryland Association of Municipal Wastewater Agencies, Inc.	<p>Part V of the Draft GP mandates that a permittee discharging into a water with an established or approved TMDL, including the Chesapeake Bay TMDL and Maryland Watershed Implementation Plan (WIP), “must implement measures to ensure that the discharge of pollutants from the site is consistent with the assumptions and requirements of the approved TMDL, including any specific wasteload allocation that has been established that would apply to the discharge.” MAMWA objects to this text for the following reasons.</p> <p>First, MAMWA submits that it is impossible to read Part V and understand how to comply, especially with regard to the Chesapeake Bay TMDL and state WIPs. The expectations for future action on an individual construction site are not explained in any of these documents. The state’s Phase I WIP makes little to no mention of this sector. The state’s Phase II WIP is more illustrative, and includes, for example, a target strategy for percentage reductions of nutrients from the sector as a whole. However, it fails to explain how these targets will be translated for individual permittees under the GP. Unless MDE is able to clarify its intentions—for example, by adding specific requirements for more frequent site inspections or more stringent deadlines to complete site stabilization--MAMWA doubts any permittee will comprehend the underlying permit requirement.</p> <p>Second, MAMWA is concerned that this section of the Draft GP gives a permittee no actual notice of TMDL requirements at the time the GP is issued. Specifically, the permittee must address an established or approved TMDL, even if the TMDL has not yet been written.</p> <p>The issuance of the GP to a particular permittee, just like the issuance of an individual permit, must be made pursuant to the Md. Code Env. §1-601, et seq. (Public Participation in the Permitting Process). The statutory requirements imposed as a part of this process ensure that the public, including the permittee, have adequate information about the terms of the proposed permit. For example, MDE’s Tentative Determination to issue a particular discharge permit must include “[a]ny proposed permit limitations and conditions” (Md. Code Env. §1-604(a)(1)(ii)) and MDE must provide adequate opportunities for public comment. Although MAMWA acknowledges the special challenges that come with crafting a General Permit (along with the attendant benefits for both permittees and the Department), we respectfully note that, as drafted, Part V of the Draft GP does not give the permittee or the public reasonable notice of the requirements it will impose or the option to submit comments on whether the term is fair and achievable.</p> <p>MAMWA submits that a permittee must know or be able to determine at the time of GP coverage what the requirements will be. If they are not determinable at that time, the proper procedure is for MDE to reopen and modify the permit during the term, as permit Part VII (Reopener Clause) authorizes. Alternately, we suggest that</p>

	requirements relating to TMDLs finalized after the permit effective date may simply be imposed with the next five-year reissuance. In fact, the short five-year term of NPDES permits is meant (1) to allow for the imposition of new or changed requirements with changing conditions and needs and (2) to provide a measure of reasonable assurance for the permittee as to what his requirements will be during the term. These provisions protect not only the permittee, but also third parties who may have input into purported new mid-term requirements.
Potomac Electric Power Company and Delmarva Power & Light Company	Provide more details and specificity about how compliance with the consistency with TMDL section can be achieved, monitored and enforced.
<i>MDE Response</i>	<i>Part V of the permit requires permittees to comply with all TMDLs. Note that, at this time, TMDLs in Maryland do not place specific requirements on construction stormwater NPDES permittees. These discharges are included in an aggregate Waste Load Allocation (WLA) for the type of discharge. MDE's permit is compliant with these WLAs. As discussed above, MDE has analyzed whether the existing regulatory program will meet pollutant targets in the Chesapeake Bay TMDL, and found that they will, using the appropriate Chesapeake Bay Program models (Phase 5.3.2). Reopening the General Permit each time a new TMDL that does have specific construction stormwater requirements becomes effective would be a significant time and resource burden. MDE understands that TMDL requirements (if any) that become known during the term of the 2014 General Permit could create difficult circumstances for permittees whose projects are already underway, but MDE may nevertheless need to craft a way for permittees to meet any such requirements.</i>
Comment Subject	MDE must require all plans to meet 2011 Standards and Specifications
Commenter	Comment
U of MD School of Law for Waterkeepers	MDE must require existing site operators to update their ESC and SWM plans to comply with current regulations and TMDLs requirements. MDE cannot permit construction stormwater discharges from any site without imposing all current effluent limitations and erosion and sediment control regulations on the permittee.
<i>MDE Response</i>	<i>The draft permit inadvertently exempted continuing permittees from Part II.B.4, which requires permittees to obtain plan approval before commencing earth disturbance. MDE changed the language of Part II.A to exempt continuing permittees only from Parts II.B.2 and 3 regarding the public notification process. As an implementation measure, MDE will be requiring continuing permittees to confirm that the erosion and sediment control plan is approved before MDE grants coverage under the 2014 General Permit.</i> <i>The commenter refers to provisions in Maryland regulations exempting projects meeting certain deadlines from the requirement to develop erosion and sediment control plans that meet the updated 2011 Standards and Specifications. See COMAR 26.17.01.08.G(2). The commenter argues that federal and State regulations require</i>

	<p><i>MDE to compel applicants meeting these deadlines to nevertheless update their plans to the 2011 Standards and Specifications. MDE notes that Part IV.A.1 of the 2014 General Permit requires compliance with the effluent limitations of 40 C.F.R. § 450.21. As noted previously, MDE included in the permit text any effluent limitation not covered by the 1994 Standards and Specifications. Except as necessary to comply with the federal effluent limitations, the updated COMAR 26.17.01 regulations, including the exemption mentioned above, together comprise the most updated standards, and MDE is not required to separately compel permittees to update plans via the General Permit. The commenter also notes that EPA's 2012 Construction General Permit (CGP) has a different exception for existing projects, which allows the waiver of new permit requirements if a permittee provides an explanation of why it is infeasible to implement the specific requirement. MDE notes that EPA's 2012 CGP is a permit, not a regulation, and MDE need not implement all aspects of its own permit exactly as EPA has.</i></p>
<p><i>Change in Final Determination</i></p>	<p><i>MDE has changed Part II.A.2 to state that existing projects covered under the previous general permit are exempt only from Part II.B.2 and II.B.3 (regarding public notification period and requests to require individual permit). MDE has also added language to Part IV.A.1.b to make that provision consistent with the federal effluent limitation effective May 5, 2014. See 40 C.F.R. § 450.21(d)(2); 78 Fed. Reg. 62, 19439 (April 1, 2013); 79 Fed. Reg. 44, 12665 (March 6, 2014).</i></p>
<p>Comment Subject</p>	<p>Public notification for continuing permittees</p>
<p>Commenter</p>	<p>Comment</p>
<p>U of MD School of Law for Waterkeepers</p>	<p>MDE must provide meaningful opportunities for public comment on all applications for General Permit coverage, including renewal applications.</p>
<p><i>MDE Response</i></p>	<p><i>Continuing projects have already completed the plan approval process for which the public notification period was designed. Citizen groups wanted an opportunity to know when a project was applying for General Permit coverage and where the draft plans were under review, and applicants wanted to know about citizen concerns regarding plans while they were under review, not after all approvals had been obtained (so that any agreed-upon changes could be made during the review process). For construction projects that are already active, the Compliance Program handles issues arising after permit issuance as complaints and sends inspectors to investigate based on an assessment of the nature of the complaint. MDE has the authority to require individual permit coverage at any time, should the circumstances at the site so warrant.</i></p>
<p>Comment Subject</p>	<p>Environmental Site Design requirements</p>
<p>Commenter</p>	<p>Comment</p>
<p>U of MD School of Law for Waterkeepers</p>	<p>MDE has removed the requirement for a written statement on the utilization of Environmental Site Design ("ESD") from the General Permit. MDE must include clear requirements for environmental site design in the permit.</p>
<p>Chesapeake Bay</p>	<p>The tentative permit must include the requirement to submit a written explanation with Erosion and Sediment Control Plans and Stormwater Management Plans that</p>

Foundation	address critical issues. The obligation to use ESD, and the standard that is created by use of ESD, is an “effluent limitation” under the Clean Water Act. Just as the ESD standard was included in the 2009 General Permit, Part II.A.3, failing to include this requirement would be in violation of the federal Clean Water Act (CWA). Indeed, to exclude the requirement from this permit would be impermissible back-sliding under the Clean Water Act.
<i>MDE Response</i>	<i>MDE finalized the 2009 General Permit before the changes to Maryland regulations implementing ESD were in effect, so MDE included the requirement for a written statement in the 2009 General Permit. ESD is now required in approved plans through Maryland regulations, see COMAR 26.17.02.06, so the 2014 General Permit need only require permittees to obtain and follow approved plans, as it does at Part II.B.4. CWA anti-backsliding provisions are inapplicable to administrative requirements of permits, such as requiring a written statement with an NOI. See 33 U.S.C. § 1342(o).</i>
<i>Change in Final Determination</i>	<i>MDE has removed language referencing ESD in Part VI.A, which is no longer necessary as ESD is now incorporated into the regulations.</i>
Comment Subject	Self-monitoring requirements
Commenter	Comment
U of MD School of Law for Waterkeepers	Under the Draft Permit, permittees must only inspect stabilized areas once each month, and permittees no longer need to inspect stabilized areas after rainfall events. The permit’s relaxed monitoring requirements for stabilized areas conflict with Maryland regulations in that the 2011 Standards and Specifications say a plan holder should inspect, at a minimum, the site and all controls weekly and the next day after each rain event. MDE proposes monitoring provisions in the Draft Permit that are weaker than those in EPA’s CGP, which allows permittees to either perform self-inspections every seven days, or every fourteen days and after any rainfall event of more than one-quarter inch.
U.S. Department of Defense	A project site may include multiple areas of construction. The start of construction in different areas may be phased or delayed. Consequently, an area on a site may be permanently stabilized while construction proceeds in other areas. The conduct of monthly inspections in any permanently stabilized areas would be unnecessary.
<i>MDE Response</i>	<i>MDE interprets the requirement of the 2011 Standards and Specifications to require inspection of disturbed areas once per week and after rainfall. See 2011 Standards and Specifications at A.6. MDE’s inspection requirements are more stringent than EPA’s, as they are required every week and after rainfall producing runoff, not either every seven days or every fourteen days and after any rainfall event. See also Section 4.1.4.1 of the EPA CGP, which decreases the inspection frequency for stabilized areas to monthly. MDE notes that its enforcement activities have identified areas previously stabilized (on an otherwise active site) where erosion has occurred. MDE finds that a monthly inspection requirement for such stabilized areas within a larger permitted area strikes the right balance between the need to continue inspections to check for redeveloping erosion and the permittee’s request to lessen the inspection burden on such areas. MDE reminds permittees that, for sites fully stabilized and inactive, termination of the permit eliminates the need to perform any inspections.</i>

<i>Change in Final Determination</i>	<i>MDE will retain the requirement to inspect stabilized areas once a month. MDE added clarifying language in Part IV.C.1.c stating that the permittee must document the beginning and ending dates of the period of stabilization in its inspection reports.</i>
Comment Subject	Keeping plans on site
Commenter	Comment
U of MD School of Law for Waterkeepers	Maryland ESC regulations require all active construction sites to keep their erosion and sediment plans "on-site and available." COMAR 26.17.01.09(C). Additionally, inspectors must ensure that the ESC plan and related permits are "on the site as required." COMAR26.17.0 1.09(E)(1). The ESC regulations provide no exception to this on-site document maintenance requirement. To resolve the inconsistency between the Draft Permit and Maryland's ESC regulations, MDE should revise the Draft Permit to eliminate the proposed exception to the on-site document maintenance requirement.
<i>MDE Response</i>	<i>MDE agrees with the comment, but notes that the regulations requires ESD plans to be on-site and available only for active sites.</i>
<i>Change in Final Determination</i>	<i>MDE has revised Part IV.C.3 to be compliant with COMAR 26.17.01.09(C) by requiring plans to be on-site and available when a site is active.</i>
Comment Subject	Training requirements for those working at the construction site
Commenter	Comment
U of MD School of Law for Waterkeepers	MDE must clarify the permit's training requirements. The permit text includes a waiver provision that cites an incorrect statutory subsection: Environment Article 4-104(b) instead of 4-104(c). The waiver provision should be completely removed from the draft permit because it conflicts with MDE's duty to ensure that permittees comply with their permits and associated plans.
Maryland State Builders Association	Provide additional information on the MDE website about training opportunities provided by the Department, local government and private entities.
Potomac Electric Power Company and Delmarva Power & Light Company	Address whether current Certificate of Training program for personnel will be updated to cover new requirements and address whether current holders will need to be re-certified.
<i>MDE Response</i>	<i>MDE agrees that the proposed 2014 General Permit referenced the incorrect provision of the sediment control statute in Part IV.C.1 and has corrected the reference. MDE believes the limited waiver provision in the statute for projects involving four or fewer residential units is appropriate and that it would be confusing to disallow such a waiver in the General Permit if it is granted in the Environment Article. MDE notes that the request for additional responsible personnel training information is outside the scope of the General Permit. However, the Sediment, Stormwater, and Dam Safety Program is engaged in an effort to update the training program, and an online training system is under review.</i>
<i>Change in</i>	<i>MDE has corrected the statutory citation in Part IV.C.1. MDE has also changed the</i>

<i>Final Determination</i>	<i>language referencing a “Certificate of Training card” to “valid certificate of attendance at a training program” for consistency with the statute.</i>
Comment Subject	Penalty amounts
Commenter	Comment
Maryland State Builders Association	Ensure that the fine amounts, caps and penalty terms are consistent with other water quality programs violation provisions.
Betsy Nicholas, Waterkeepers Chesapeake, at the public hearing	Questions reduction in criminal fines for falsification and tampering from \$50,000 to \$10,000.
<i>MDE Response</i>	<i>MDE has reviewed the text of the penalty sections for consistency with the Clean Water Act and applicable regulations, including federal regulations at 40 C.F.R. § 19.4, which provide for adjustment of civil penalties for inflation, and Clean Water Act Section 309(c)(4), for criminal fines for falsification and tampering. MDE has edited the text of Part VI.T to agree with the penalty amounts effective after December 6, 2013, in 40 C.F.R. § 19.4. A person convicted of knowingly making a false statement or tampering with a monitoring device is subject to a fine not exceeding \$50,000 or imprisonment not exceeding 2 years, or both under State law. Md. Code Ann., Envir. § 9-343(b). Part VI.S provides that the criminal penalties provided therein are in addition to those set forth in section 9-343 of the Environment Article.</i>
<i>Change in Final Determination</i>	<i>MDE has changed the term “criminal penalties” to “a fine” in Part VI.S.1 and VI.S.2 to be consistent with the federal statute. MDE has adjusted the administrative penalties in Part VI.T.2 to the amounts effective after December 6, 2013 under 40 C.F.R. § 19.4.</i>
Comment Subject	Soil stabilization requirements
Commenter	Comment
Chesapeake Bay Foundation	Requirements for temporary stabilization must be tightened so that soil is not exposed without stabilization for longer than 72 hours.
<i>MDE Response</i>	<i>MDE finds the current stabilization requirement to be sufficient and will not cause confusion by requiring a different standard in the General Permit. COMAR 26.17.01.07.B(f)(i) has the following requirement for all sites requiring an Erosion and Sediment Control Plan: “Following initial soil disturbance or redistribution, permanent or temporary stabilization is required within three calendar days as to the surface of all perimeter controls, dikes, swales, ditches, perimeter slopes, and all slopes steeper than 3 horizontal to 1 vertical (3:1); and seven calendar days as to all other disturbed areas on the project site except for those areas under active grading.” Changes to this provision require a regulatory change outside the scope of issuance of the General Permit.</i>
Comment Subject	Inspections by municipal staff or certified engineer

Commenter	Comment
Chesapeake Bay Foundation	The permit should incorporate the regulatory requirement that inspections must be done by county or municipal staff or a certified engineer.
<i>MDE Response</i>	<i>COMAR 26.17.02.10 refers to requirements for local governments conducting Stormwater Management programs and is outside the scope of the General Permit. MDE agrees that inspections for erosion and sediment control and stormwater management compliance by MDE staff and delegated authority personnel are essential to ensuring compliance with approved plans.</i>
Comment Subject	Types of erosion control matting allowed
Commenter	Comment
Drew Koslow, Choptank Riverkeeper, at the public hearing	Use of plastic in Curlex and other types of erosion control matting kills fish. MDE should specify use of jute or other natural fibers near wetlands, waterways, or any kind of natural areas that are going to provide habitat.
<i>MDE Response</i>	<i>Requirements for erosion and sediment control devices are set in the Standards and Specifications for Erosion and Sediment Control. The Compliance Program is providing this comment to the Sediment, Stormwater, and Dam Safety Program, which administers the Standards and Specifications.</i>
Comment Subject	Fees and process for continuing permittees
Commenter	Comment
Maryland State Builders Association, NAIOP – Maryland Chapters	Revise the transition requirement for current permittees to allow for continuation of their current coverage without payment of additional fees. Requiring a fee for essentially the same coverage is unfair.
U.S. Department of Defense	Projects previously approved under the current version of the permit have already met regulatory requirements for project submittals and paid fees to fund the MDE review and inspection. No justification is provided for the resubmittal and repayment. Projects that extend exceptionally long periods of time may need to be reevaluated with respect to resources needed to cover MDE inspections, etc. However, projects may cross a permit cycle even though they just recently received coverage under the current permit. Fairness of fee payment should be addressed in the regulation that contains the fee schedules.
Potomac Electric Power Company and Delmarva Power & Light Company	If MDE does not immediately issue permit coverage for continuing projects, there may be period of time when a project may not be covered by the current or new GP. Commenter requests that MDE continue current permit coverage if necessary after January 1, 2014, and add a 90-day period for existing projects to be approved under the new GP or grandfather continuing projects under the new permit.
<i>MDE Response</i>	<i>While MDE has generally not required a fee payment in the past for continuing coverage under the General Permit for Stormwater Associated with Construction</i>

	<p>Activity, MDE has done so for other general permits. Some construction projects have had coverage since the 1990s with only one fee payment. With regard to fairness, a project that finishes in 6 months pays the same fee as one that takes years. So paying a fee at least every 5 years for a long term project is reasonable. MDE will exempt those projects which obtained coverage under the 2009 General Permit on or after January 1, 2013, from paying the NOI fee for the 2014 General Permit. Administratively, MDE needs existing permittees to resubmit NOIs for several reasons, including:</p> <ul style="list-style-type: none"> • Many permittees fail to submit Notices of Termination upon completion of their construction project, so requiring resubmittal of an NOI will remove such projects from the active permit program. • MDE's existing General Permit tracking database is decades old and not compliant with the up-to-date versions of Microsoft Windows now being deployed at MDE. Technical issues prevent it from being upgraded, and the data is insufficient to migrate to the new system. MDE believes permittees will find the new system far preferable to the existing paper-based process, in that they will be able to submit NOIs and pay instantaneously, track status at all times, receive feedback electronically, and submit transfers and terminations electronically. <p>MDE expects that continuing projects will be able to apply for and receive permit coverage in a timely fashion using this new system.</p>
Change in Final Determination	MDE has added language to Part II.F exempting from the 2014 General Permit NOI fee those persons who hold coverage obtained on or after January 1, 2013, and that coverage is still in effect on December 31, 2014.
Comment Subject	Discrete disturbances less than one quarter mile from each other
Commenter	Comment
Maryland State Builders Association	The definition of "construction activity" has been revised to include construction-related activities that may occur within one quarter mile of the construction site. It is unclear how permittees will report offsite activities or how regulatory inspections will be conducted.
Maryland Association of Municipal Wastewater Agencies, Inc.	<p>Part I.B.3.b of the Draft Permit would require that a person obtain coverage for "discrete disturbances" within a ¼ mile of each other if "under the control of the same person."</p> <p>MAMWA suggests that the current text is overly broad, confusing, and could result in the need to permit unrelated sites that would ordinarily not be covered by the GP. For example, a municipality constructing a small library parking lot and a storage building for a county park within a ¼ mile would be aggregated together for coverage, even though they are separate projects.</p> <p>Additionally, MDE has provided no explanation for why it chose ¼ mile as the appropriate distance between the two areas. This appears to be an arbitrary decision that would result in inconsistent treatment of similar projects purely based on the distance between a staging area and the main construction site.</p> <p>MAMWA notes that EPA's Multi-Sector general permit defines "Construction Site" to include support activities which "may be located at a different part of the property from where the primary construction activity will take place, or on a different piece of property altogether," and specifically authorizes stormwater discharges from</p>

	<p>construction support activities if they meet a number of requirements (ex., support activity must not serve multiple unrelated construction projects). EPA MSGP, Part 1.3.c. Thus, permit coverage is required if the construction project, which presumably includes related support areas, disturbs 1 or more acres of land or is part of a common plan of development. MAMWA can find no reference to “discrete disturbances” in EPA’s MSGP. The Draft Permit includes a similar definition of “Construction Activity” at Part IX of the GP, and the definition includes construction-related activities (although they are limited to areas within ¼ mile of the main activity). It is unclear why the Part IX language would not meet MDE’s goal of adding these areas to the permit; after all, the permit “covers all new and existing stormwater discharges” that are associated with “construction activity” as defined by federal law and Part IX.3 of the GP. It appears that the “discrete disturbances” text is unnecessary.</p> <p>For these reasons, MAMWA requests that MDE strike the portion of the permit that mandates permit coverage for discrete disturbances within one quarter mile from another discrete disturbance.</p>
Potomac Electric Power Company and Delmarva Power & Light Company	Greater clarity is needed about equipment staging and material storage areas, if such an area over one acre needs its own NOI, and how support areas are considered when calculating total NOI area.
<i>MDE Response</i>	<i>MDE agrees with the commenter that the requirement to obtain coverage for discrete disturbances within one quarter mile may require inclusion of unrelated projects in a single NOI. MDE finds that the inclusion of construction support activities within the definition of “Construction Activity” in Part IX.3 is adequate to ensure that related construction activities located separately from the primary construction activity are included in the NOI. MDE has amended the definition of “Construction Activity” to include construction support activities as defined in the EPA 2012 Construction General Permit with the exception of concrete or asphalt batch plants, which are addressed in Part II.A.3.</i>
<i>Change in Final Determination</i>	<i>MDE has removed the language regarding discrete disturbances within one quarter mile from Part I.B.3.b and the language limiting construction related activities to those within one quarter mile of the main activity from the definition of “Construction Activity” at Part IX.3.</i>
Comment Subject	Large construction projects and the General Permit
Commenter	Comment
NAIOP – Maryland Chapters	We are concerned that some may take advantage of the reapplication process to assert the erroneous interpretation that large projects are no longer eligible for general permit coverage.
Rodgers Consulting	Will reapplication procedures and MDE policy about sites over 150 acres discharging to impaired waters mean that these large sites with individual permits have to stop work, stabilize, amend plans and not work until a new individual permit is issued?
<i>MDE</i>	<i>Under the 2014 General Permit, all projects will begin the permit process as</i>

<i>Response</i>	<i>General Permit applicants unless MDE directs otherwise.</i>
<i>Change in Final Determination</i>	<i>MDE has added language at Part II.A.3 clarifying the procedure for existing sites holding individual permits for discharge of stormwater associated with construction activity.</i>
Comment Subject	Definition of structure
Commenter	Comment
Luis Dieguez, District Manager, Charles Soil Conservation District	Add a definition for “structure” in Part IX, Definitions.
<i>MDE Response</i>	<i>MDE believes the plain-language meaning of the word “structure” is sufficient. If there are particular situations in which a permittee or potential applicant is unsure whether the word “structure,” as used in the General Permit, applies to their project, MDE can provide guidance.</i>
Comment Subject	Emergency authorization
Commenter	Comment
Maryland Association of Municipal Wastewater Agencies, Inc.	<p>MDE should provide localities flexibility to use emergency authorization in all reasonable circumstances. MAMWA is concerned that the definition of an emergency is subjective and could be subject to varying interpretations depending on the situation. We do not want to be in the position of undertaking earth-disturbances we believe to be an emergency, only to be questioned after the fact. We need as much flexibility as possible to make quick decisions on water and sewer line and equipment repairs. It is unclear what MDE will consider to be a “natural disaster” or how many sewer customers must be impacted before a disruption is considered “widespread.” Our primary responsibility is to ensure the safety of our utility customers and to avoid any negative impacts on the natural environment. We know MDE shares these goals, and we ask the Department to be fair in its application of this permit term.</p> <p>In addition to reasonable application of the requirement, MAMWA requests that MDE change the 24 hour notification requirement to a requirement that the person “obtain emergency authorization from the Director as soon as practicable after initiating earth-disturbing activities.” The first 24 hours of an emergency are challenging for localities. In many cases, we are working around the clock to ensure that our citizens and their homes are safe. Respectfully, this should take precedent over a phone call to ensure regulatory compliance.</p> <p>As a corollary point, emergency authorization should be properly referenced throughout the permit. For example, in Part II.A.1, the text should state that persons shall not “perform any land disturbing activities prior to receiving MDE documentation of coverage under the general permit unless authorized as an emergency pursuant to Part I.D.2 above.” MAMWA requests that MDE review the permit to ensure there are no additional terms which would contradict the ability to act in an emergency situation.</p>
Potomac	Add language to alleviate the potential for enforcement liability in situations with

Electric Power Company and Delmarva Power & Light Company	emergency authorization.
<i>MDE Response</i>	<i>MDE agrees with the change to Part II.A.1 and has made the requested revision. Overall, MDE finds that the proposed emergency authorization strikes the right balance to allow localities to adequately address emergencies with MDE concurrence. MDE anticipates that there will be only limited instances where an entity must begin earth disturbance in an emergency where that project will ultimately disturb one acre or more. Smaller projects, such as those typical where a water or sewer line is damaged, do not need General Permit coverage. MDE will retain the authority to authorize emergency projects that must begin before submission of an NOI and completion of the 14-day public notification period. With regard to enforcement liability, MDE will exercise enforcement discretion as appropriate, but does not think a blanket “hold harmless” statement for all requested emergency authorizations is needed.</i>
Comment Subject	Requirements for control of trash
Commenter	Comment
Maryland Association of Municipal Wastewater Agencies, Inc.	Revise the permit to make requirements for addressing trash consistent with the State’s narrative water quality standards. The State’s narrative standard for trash does not require zero discharges of trash, garbage and floatable debris. The Draft Permit goes beyond these requirements by mandating that these materials are not discharged. More importantly, although permittees may endeavor to keep construction sites as clean as possible and to clear trash and debris, it is hard to imagine that any permittee could reasonably keep construction sites free of trash or intercept trash before it is discharged. This is simply not the nature of a working construction site. Including this term will put all permittees at continuous risk for non-compliance. For these reasons, MAMWA recommends that the state revise this requirement consistent with COMAR.
<i>MDE Response</i>	<i>MDE is retaining the requirement as presented in the draft General Permit. Permittees have a responsibility to prevent trash, garbage, and floatable debris from becoming surface water pollutants. MDE notes that Maryland’s Litter Control Law prohibits disposal of litter unless into a litter receptacle (Md. Criminal Law Code Ann. § 10-110).</i>
Comment Subject	Environmental Site Design requirements for environmentally beneficial projects
Commenter	Comment
Maryland Association of Municipal Wastewater Agencies, Inc.	MAMWA shares the concerns of its sister agency, MAMSA, with regard to the application of environmental site design (ESD) to the maximum extent practicable (MEP) for MS4 restoration and other nutrient-removal projects. Many of our Members will be constructing environmentally beneficial, enhanced-nutrient removal (ENR) facilities designed to reduce nutrients into the Chesapeake Bay. Most of these projects will be larger than 1 acre in size, and will therefore need NPDES

	<p>construction general permit coverage pursuant to federal law. However, MAMWA does not believe it makes sense to require that Members submit a stormwater management plan for each of these projects that, in turn, must be written to include ESD to the MEP. These projects will likely not be able to comply with ESD to the MEP, nor should they be required to pursuant to state law.</p> <p>For these reasons, we urge MDE to consider the textual changes proposed by MAMSA before it finalizes the GP.</p>
<i>MDE Response</i>	<i>The Stormwater Management Act, see Md. Code Ann., Envir. § 4-203, and regulations at COMAR 26.17.02 govern which projects must have an approved stormwater management plan and use ESD. If a project is exempt from these regulations or obtains a waiver, then the General Permit does not require the permittee to have a plan (see Part II.B.4). MDE notes that some environmentally beneficial projects may nevertheless alter the stormwater runoff characteristics of a site such that applicable law and regulation would require a stormwater management plan.</i>
<i>Change in Final Determination</i>	<i>MDE has added language in Part II.B.4 to clarify that a person who obtains a proper waiver from the stormwater management plan approval authority is not required to obtain an approved stormwater management plan prior to commencing construction.</i>
Comment Subject	Permit requirements for continuing projects
Commenter	Comment
Maryland Association of Municipal Wastewater Agencies, Inc.	<p>Part II.A.2 of the current general permit (09GP) allows a permittee covered by a previous version of the general permit to keep coverage for construction projects that began before the permit effective date: “Permittees whose projects are currently covered under a previous version of the general permit will be covered under the new general permit, effective January 1, 2009 (General Permit), when it becomes effective. Compliance with all requirements under the new General Permit, effective January 1, 2009, is required for an additional phase or phases of multi-phased project not covered under the pre-existing NOI.”</p> <p>MDE has changed this text in the Draft GP. A permittee currently covered by 09GP who wishes to be covered by 14GP must file an NOI by December 31, 2013. The sentence quoted above requiring compliance with the new GP for additional phases of a multiple-phased project has been removed.</p> <p>MAMWA supports the 09GP text as a fair and reasonable way to treat a project constructed over two permit cycles. Many of the construction projects POTWs undertake are long-term, capital-intensive projects developed on a schedule unrelated to the reissuance of the GP.</p>
<i>MDE Response</i>	<i>MDE does not find that the new requirements of the 2014 General Permit would be unduly burdensome for projects with existing permit coverage and continuing under the new permit. The 2014 General Permit does not, for example, require redesign of erosion and sediment control plans for continuing projects simply due to reapplication for coverage under the new permit. In addition, once the 2014 General permit is in effect, the 2009 General Permit will no longer be in effect, and MDE will not create a situation where some sites need only comply with a permit no longer in effect.</i>
<i>Change in</i>	<i>MDE has changed the effective date of the 2014 General Permit to January 1, 2015</i>

<i>Final Determination</i>	<i>in order to allow adequate time for permittees with existing permit coverage to apply for the 2014 General Permit.</i>
Comment Subject	Preventing discharge of significant amounts of sediment
Commenter	Comment
Potomac Electric Power Company and Delmarva Power & Light Company	Address whether preparing and keeping the NPDES Inspection forms in a logbook satisfies the requirements to prevent the discharge of significant amounts of sediment. If a triggering event happens on Saturday or Sunday, will MDE staff be available for notification?
<i>MDE Response</i>	<i>The permittee must comply with the terms of Part IV.B; keeping the inspection forms in a logbook by itself does not provide compliance with these terms. MDE has a 24-hour emergency response system in place every day of the year.</i>
Comment Subject	Inspection and Entry
Commenter	Comment
Potomac Electric Power Company and Delmarva Power & Light Company	Add a new subparagraph that makes it clear that access for inspection and entry are subject to the permittee's reasonable access rules, safety procedures and guidelines. Some PEPCO areas may require advanced notice, trained escort, personal protection equipment and safety training.
<i>MDE Response</i>	<i>The access for inspection at reasonable hours is standard permit language. MDE staff contact responsible parties upon arrival at a site and are trained to observe safety procedures. Inspection of dangerous areas is arranged on a case-by-case basis as needed.</i>
Comment Subject	Regulations for water clarity
Commenter	Comment
Chris Yoder, Greater Baltimore group of Sierra Club	Create regulations that require water clarity to a depth of 12 feet. MDE standards and regulations need to require more than good intentions and a plan.
<i>MDE Response</i>	<i>Revisions to Maryland's water quality standards are outside the scope of the General Permit. Note that the General Permit includes many provisions in addition to the requirement to have approved plans, such as self-inspections, the triggering provisions if discharges of significant amounts of sediment are observed, and the requirement to meet Water Quality Standards.</i>