



MARYLAND DEPARTMENT OF THE ENVIRONMENT

Water and Science Administration
Wastewater Pollution Prevention and Reclamation Program
Industrial Stormwater Permits Division
1800 Washington Boulevard, Suite 455
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Final

Response to Public Comments

Regarding the Limited Remand

General Permit for Discharges from Stormwater Associated with Industrial Activity

State Discharge Permit No. 20-SWA

NPDES Permit No. MDR0000

Final: December 31, 2024

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INTRODUCTION

The Maryland Department of the Environment (the “Department”) is amending the National Pollutant Discharge Elimination System (NPDES) GENERAL PERMIT FOR DISCHARGES FROM STORMWATER ASSOCIATED WITH INDUSTRIAL ACTIVITY (NPDES Permit No. MDR0000, Discharge Permit No. 20-SW) (collectively, the “20-SW permit”), which authorizes the discharge of stormwater associated with industrial activity to waters of the State. The 20-SW permit was issued on November 8, 2022 and became effective on February 1, 2023. The Department's final determination for the 20-SW permit was challenged in the Circuit Court for Baltimore County (case numbers C-03-CV-22-005075, C-03-CV-22-005086, C-03-CV-22-005087). In these cases, the Department agreed to a limited remand to accept comments on three specific sections of the 20-SW permit:

- No Exposure Certification – Part I.F.
- Comprehensive Site Compliance Evaluation – Part V.A.2.b.
- Stormwater Pollution Prevention Plan (SWPPP) Requirements – Part III.C.

The remainder of the 20-SW permit is final and was not opened for public comment. The Department accepted comments on these sections of the 20-SW permit from August 23, 2023 through November 25, 2023. Pursuant to the limited remand, the Department also held a public hearing to accept comments on September 28, 2023.

The Department has evaluated the comments received during the public comment period, and this document addresses those comments. The Department has also amended the 20-SW permit in response to certain comments as described in this document and summarized below. The State discharge permit number for the amended permit is Discharge Permit No. 20-SWA.

SUMMARY OF CHANGES FROM THE 20-SW FINAL DETERMINATION

Changes related to No Exposure Certification – Part I.F

- This section has been updated so that the 20-SW permit’s no exposure certification requirements reflects 40 CFR § 122.26(g), which states that discharges composed entirely of storm water are not storm water discharges associated with industrial activity if there is “no exposure” of industrial materials and activities to rain, snow, snowmelt and/or runoff, and the discharger satisfies the conditions in [paragraphs \(g\)\(1\) through \(g\)\(4\)](#). Additionally, each no exposure certification must include the size of the facility, the EJ Score, and identify if the facility is in the flood plain, for the facility that requests the exclusion.

Changes related to the Comprehensive Site Compliance Evaluation – Part V.A.2.b.

- In addition to the facilities with benchmarks, all facilities that are located in a census tract where the EJ Score equals or exceeds 0.76 must submit their Annual Site Evaluation to

the Department. An EJ Score greater than or equal to 0.76 (76%) is an “overburdened community.”

- Annual reports may be uploaded to NetDMR, emailed to the Department’s Industrial Stormwater Permits Division, or submitted through an eNOI system once established by the Department.

Changes related to Stormwater Pollution Prevention Plan (SWPPP) Requirements – Part III.C.

- A cross reference to the permit related Control Measure Selection and Design Considerations (Part III.B.a.viii) to specify updates of the SWPPP are based on new information and experiences with major storm events was added.
- A cross reference to the permit-related documentation required for new facilities discharging to impaired watersheds (Part I.C.5). The Department will post the referenced documentation on the Department’s website for new facilities that are located within an overburdened community.

In the event of any inconsistency between the Permit Fact Sheet for the 20-SW permit, the previous response to comments, and this document, this document shall take precedence.

RESPONSES TO SPECIFIC COMMENTS

1. COMMENT CATEGORY – General Comments to Improve Permit

Comments 1: Comment 1 is a compilation of form emails that all had nearly identical language. These general comments demonstrate ongoing interest in ensuring the 20-SW permit and its enforcement protect waters of the State without offering specific comments on the 20-SW permit itself.

Response: The overwhelming majority of the form email comments focus generically on the perceived weaknesses of the 20-SW permit without offering specific comments, suggestions, or feedback. The comments are addressed by elements of the 20-SW permit’s fact sheet and response to comments. For instance, the alleged absence of pollution limits consistent with the Chesapeake Bay Blueprint is addressed in the 20-SW permit fact sheet pages 41 through 44, and the remainder of the technology and water quality-based limits are addressed from pages 44 through 61 of the 20-SW permit fact sheet. Additionally, pages 41 through 57 of the 20-SW permit’s fact sheet address the remaining, specific recommendations in this group of comments.

The comments that focus on specific elements of the 20-SW permit remand or provide specific feedback, comments, or suggestions are addressed in other sections of this document. The comments that generally discuss the perceived merits of the 20-SW permit without reference to specific provisions, feedback, comments, or suggestions are non-substantive and require no response. The Department also notes that implementation, including enforcement, is a post-issuance subject of enforcement discretion as a matter of policy and therefore outside the scope of this final determination.

2. COMMENT CATEGORY – No Exposure – Part 1. F.

Grouping – No Exposure Requirements for Smaller Facilities

The Department received numerous comments addressing the no exposure certification (NEC). Many of these comments highlight potential confusion regarding the purpose of the NEC and the coverage of the 20-SW permit. To address these comments, the Department will provide an overview of the NEC process, then address specific categories of comments that relate to individual aspects of the NEC process.

The NEC process is codified at 40 CFR § 122.26(g). The NEC process addresses a threshold question for industrial facilities: are industrial materials/activities (and their resulting pollutants) exposed to rain, snow, snowmelt, or runoff, and therefore discharging pollutants or placing pollutants in a position likely to be discharged to waters of the State or to a municipal separate storm sewer system (MS4) that discharges to waters of the State? *See, e.g.*, 40 CFR § 122.26(b)(14) (defining storm water discharge associated with industrial activity). The exposure of industrial activity to precipitation or runoff places pollutants in a position likely to be discharged. Conversely, the protection of industrial activities from precipitation and runoff does not place pollutants in a position likely to discharge unless a facility falls within certain,

limited exceptions as provided in 40 CFR § 122.26(a)(9)(i)(C)-(D) or 40 CFR § 122.26(g)(3). 40 CFR § 122.26(g) recognizes this distinction and codifies a process to verify whether industrial activities are placing pollutants in a position likely to be discharged. Notwithstanding this, the Department retains authority to regulate any discharge from a facility that the Department determines causes, contributes, or has reasonable potential to cause or contribute to an in-stream excursion of a water quality standard. *See, e.g.*, 40 CFR § 122.26(g)(3)(iv).

A facility must have coverage under the 20-SW permit to discharge stormwater that is exposed industrial activity, whereas a facility that has no exposure of industrial activity to precipitation or runoff may apply for an NEC. This process may occur before or after a facility obtains coverage under the 20-SW permit because each facility is unique and individual operations may change. For example, a facility may not expose industrial activity to precipitation or runoff—if so, the facility’s operator could apply for the NEC before requesting coverage under the 20-SW permit. Similarly, a facility may obtain coverage under the 20-SW permit, then change its operations such that industrial activities are no longer exposed to precipitation or runoff—if so, the facility’s operator may apply for an NEC at that time. Finally, a facility may obtain an NEC, then change its operations later so that industrial activities become exposed to precipitation or runoff—if so, the facility must then obtain coverage under the 20-SW permit.

Given these considerations, the Department has amended the 20-SW permit to reflect that the NEC process is governed by 40 CFR § 122.26(g) and industrial facilities must comply with these requirements. In addition, the Department will require each NEC application to include the following information: (1) the EJ Score for the census tract where the facility that requests the NEC exemption is located; (2) the receiving water or municipal separate storm sewer system (MS4) where the facility’s runoff flows; (3) whether the receiving water is impaired or has a total maximum daily load (TMDL), and, if so, for what pollutants; (4) whether the facility is located within the Base Flood Elevation; and (5) the facility’s standard industrial classification system (SIC) code. This information will allow the Department to examine industrial facilities’ risk of residual water pollution notwithstanding a facility’s facial eligibility for the NEC exemption. The Department will review each NEC application for compliance with 40 CFR § 122.26(g) and may require additional information or inspection as appropriate on a case-by-case basis. The Department may deny an NEC application for the reasons provided in 40 CFR § 122.26(a)(9) or 40 CFR § 122.26(g), and the Department may also inspect facilities that receive an NEC and require those facilities to obtain coverage under the 20-SW permit, as appropriate. Each facility with an NEC exemption must also re-certify its NEC status every 5 years pursuant to 40 CFR § 122.26(g)(1)(iii).

Comments 2-3: No Exposure Certifications (NECs) are Beneficial

Comments point out the benefits to requiring operators to enclose or cover their industrial activities, with the ultimate benefit to improve water quality and support flexibility for facilities that are fewer than 5 acres in size and located outside the Flood Plain that are not in an overburdened community.

Response: These comments support the Department’s NEC process and require no response.

Comments 4-12: NEC provision Weakens the 20-SW Permit

Some commenters assert that the final determination issued on November 8, 2022 weakened the no exposure provisions that were included in the previous (12-SW) permit. These comments challenge the use of various *means* to substantiate an NEC application, including the use of photographs by smaller facilities in place of certification by a third-party engineer. Some comments also allege that the NEC process allows most industrial facilities to be excluded from the 20-SW permit and argue that the Department should require the use of third-party engineers for all NEC verifications.

Response: The Department respectfully disagrees with the commentors' assertion that use of photographic evidence in the NEC process could exempt more industrial facilities from coverage under the 20-SW permit. Photography is a means to verify compliance with the requirements of 40 CFR § 122.26(g), and facilities that meet these requirements may receive an NEC exclusion unless the Department determines otherwise on a case-by-case basis. The Department also notes that the purpose of the NPDES program is to eliminate the discharge of pollutants. If industrial activities are increasingly covered and no longer exposed to precipitation or runoff, then the number of activities that discharge pollutants is a reduced, a desirable outcome that the Department encourages.

At this point, 389 facilities in Maryland have received an NEC out of nearly 1,951 industrial facilities (19.9%). From 2016 to 2021 the number of industrial facilities eligible for the NEC increased from 11.32% to 14.07%¹. Since 2021, the number of industrial facilities that qualified for the NEC increased to 19.9%. This is a far cry from the claim that most facilities are now exempted and represents an ongoing reduction in the number of industrial activities that are exposed to precipitation or runoff. The changes to the 20-SW permit ensure that each NEC application is valid and consistent with 40 CFR § 122.26(g) while preserving the Department's authority to regulate NEC facilities and requiring ongoing verification from each facility. Please also see the Department's response "[Grouping – No Exposure in EJ Area](#)" that addresses comments about how the NEC impacts communities.

The Department also notes that the NEC exemption is not an effluent limitation. As discussed above, the NEC provisions codify a process to distinguish between facilities that have the potential to discharge pollutants through stormwater and facilities that do not—a threshold issue that evaluates the likelihood of pollution discharge in tandem with related factors that are now included in the 20-SW permit's NEC provision (see discussion above). As such, the NEC provision is an assessment of the likelihood of pollution and the need for coverage under the 20-SW permit, not an effluent limit. Accordingly, the NEC process is not subject to the Clean Water Act's Anti-Backsliding prohibition (33 U.S.C. § 1342(o)). The NEC process evaluates facilities for consistency with 40 CFR §§ 122.26(a)(9)(i)(C)-(D) and (g), and the Department reviews NEC applications for consistency with these requirements. These procedures are consistent with applicable law and do not address effluent limits, which establish the parameters within which certain pollutants may be discharged lawfully to waters of the State. *See, e.g.*, COMAR 26.08.01.01B(24).

¹ Response to Public Comments, State General Discharge Permit Number 20-SW page 28.

NEC certification statements must meet the conditions in 40 CFR § 122.26(g). NEC certification statements must be submitted by the facility's operator, who must also sign a Certification Statement, shown below, pursuant to 40 CFR § 122.26(g)(4):

the requirements of no exposure.

D. Certification Statement

I certify under penalty of law that I have read and understand the eligibility requirements for claiming a condition of "no exposure" and obtaining an exclusion from NPDES stormwater permitting.

I certify under penalty of law that there are no discharges of stormwater contaminated by exposure to industrial activities or materials from the industrial facility or site identified in this document (except as allowed under 40 CFR 122.26(g)(2)).

I understand that I am obligated to submit a no exposure certification form once every five years to the NPDES permitting authority and, if requested, to the operator of the local municipal separate storm sewer system (MS4) into which the facility discharges (where applicable). I understand that I must allow the NPDES permitting authority, or MS4 operator where the discharge is into the local MS4, to perform inspections to confirm the condition of no exposure and to make such inspection reports publicly available upon request. I understand that I must obtain coverage under an NPDES permit prior to any point source discharge of stormwater from the facility.

Additionally, I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Print Name: _____

Print Title: _____

Signature: _____ Date: | | | | | |

E-Mail Address: _____

Figure 1-Required certification statement on NEC

The Department may also require third party verification for NEC applications on a case-by-case basis, and the guidance document has been updated accordingly. The Department will continue to focus inspection resources on compliance-related issues and ensuring that NEC exemptions remain valid. With satellite imagery and Google mapping tools providing street level views and photographs of these sites, the Department can quickly ascertain whether an NEC application is questionable. The Department may also visit a site or send an inspector at any time if the Department believes there may be issues with a proposed or approved NEC.



Figure 2 – Example of satellite image and drive by photo easily obtained from Google Maps available to MDE Staff.

Sites that receive an NEC are subject to inspection and can always be reported to the Department if an issue is raised or identified. If a site has industrial activity exposed to stormwater, it does not qualify for the NEC and is subject to enforcement.

Comment 13: No Exposure Sites Should Require Additional Controls

The commenter believes sites with no materials exposed to stormwater should be subject to additional controls and even benchmarks.

Response: As discussed above, the NEC process addresses a threshold question for industrial stormwater discharges, whether industrial activity is exposed to precipitation or runoff. The Department has also revised the 20-SW permit to require the inclusion of additional information—(1) the EJ Score for the census tract where each NEC applicant facility is located; (2) the receiving water where runoff flows from the facility; (3) the condition (impaired, TMDL, etc.) of that receiving water; (4) whether the facility is located within the Base Flood Elevation; and (5) the facility’s SIC code(s). The Department will use this information on a case-by-case basis to evaluate NEC applications for residual risk of water pollution—notwithstanding the lack of exposure of industrial activities to precipitation or runoff—in accordance with 40 CFR § 122.26. The Department believes that these revisions are sufficient to address this comment. The Department also notes that the 20-SW permit represents only one type of water pollution control regulation that industrial facilities must comply with.

The 20-SW permit addresses one type of discharge—stormwater from industrial facilities. However, an industrial facility may include any number of *other* discharges that require a permit, too. For example, an industrial facility would require a discharge permit for a wastewater treatment system, a pump-and-treat system for groundwater contamination, or related discharges. In addition, stormwater discharges associated with construction activity require a discharge permit, erosion and sediment control measures, and stormwater management through the use of environmental site design to the maximum extent practicable. *See, e.g.*, Title 4, Subtitle 2 of the Environment Article, Annotated Code of Maryland. The 20-SW permit regulates one type of discharge—stormwater that is exposed to industrial activity or otherwise determined to be necessary by the Department at an industrial facility—and does not represent the full panoply of water pollution control regulations that industrial facilities are subject to.

Grouping – No Exposure in Floodplain

Comment 14: Rather than refer to BFE, permit should refer to SFHA

The commenter recommends the State use the term Special Flood Hazard Area (SFHA), instead of Base Flood Elevation (BFE), when determining if a facility is within a floodplain.

Response: The “BFE”, the “SFHA” and the “100 year floodplain” are often used interchangeably. However, when requiring a facility to evaluate if they are in an “Elevation” vs in an “Area”, the suggested change makes sense semantically. Accordingly, the Department has revised the NEC Guidance’s discussion of Base Flood Elevation to include the SFHA. The Maryland flood mapping tool required for use in determining BFE also reflects the SFHA updated maps maintained by MDE.

Grouping – No Exposure in EJ Area

Comment 9, 10, 15-17: The lack of third-party certification will impact communities overburdened by industrial facilities.

The commenter objects to the change in requirements for 3rd party certification, referencing that this is particularly problematic for overburdened communities.

Response: As a threshold matter, the Department notes that all NEC applications must include a sworn certification from the facility’s operator to verify that the statements made in the NEC application are true. *See* 40 CFR § 122.26(g)(4)(iv). Misstatements in a sworn application may be subject to civil or criminal penalties and may also subject a facility to enforcement action for discharging pollutants to waters of the State without a permit. *See, e.g.*, Envir. §§ 9-342, 9-343. As such, the comments urging the continued use of third-party certification appear to focus on the likelihood of fraud by industrial facilities, not the merit of the NEC requirements themselves. The Department will continue to use third-party certifications, in addition to all the other tools at the Department’s disposal, for facilities that are located within an overburdened community.

The commenter also mentions residual designation, which the Department has implemented under the 12-SW permit and the 20-SW permit, respectively, for inclusion of Sector AD operations, such as government owned transportation maintenance facilities and school bus maintenance. As discussed in Comment 22, these operations are excluded from no exposure certification. The Department has amended the 20-SW permit’s NEC provisions to reflect the required process as discussed above.

Grouping – No Exposure Requires Guidance

Comment 18: Lack of Guidance for Assisting in Preparation of the NEC.

The commenter quotes Dr. Richard Horner’s criticism of the 20-SW permit, suggesting that the Department does not provide guidance for NEC applications. The commentor recommends that the Department provide guidance for situations where materials are exposed to stormwater when unloading or from roof stacks or vents.

Response: Contrary to the commenter’s assertions, the Department has published [guidance for no exposure certifications](#).²

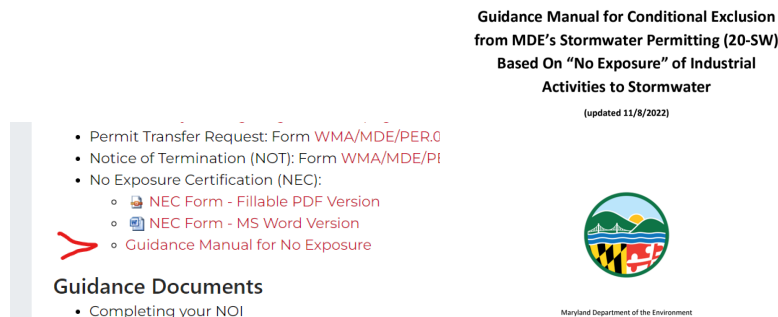


Figure 3- Website link and Cover of No Exposure Guidance

This guidance was prepared to support the 20-SW permit’s prior iteration—the 12-SW permit—and was updated in November 2022 to reflect changes in the 20-SW permit. Most recently, the

²

<https://mde.maryland.gov/programs/permits/WaterManagementPermits/Documents/GDP%20Stormwater/Guidance%20Manual%20for%20No%20Exposure.pdf>

Department updated this guidance in 2024 to address the 20-SWA permit and other discharge permits with similar clauses.

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3.2.1. Particulate Emissions From Roof Stacks and/or Vents.

As stated in the Phase II regulation, particulate emissions from roof stacks / vents do not cause a condition of exposure, provided they are in compliance with other applicable environmental protection programs (e.g., air quality control programs) and do not cause stormwater contamination. Deposits of particles or residuals from roof stacks / vents not otherwise regulated and which could be mobilized by stormwater runoff, are considered exposed. Exposure also occurs when, as a result of particulate emissions, pollutants can be seen being “tracked out” or carried on the tires of vehicles.

3.2.2. Acid Rain Leachate.

As affirmed by a recent Environmental Appeals Board decision against the General Motors Corporation, CPC-Pontiac Fiero Plant (CWA Appeal No. 96-5), industrial facilities are also responsible for stormwater discharges which contain pollutants resulting from the leaching effect of acidic precipitation on metal building structures. Therefore, operators must be aware when they attempt to certify a condition of no exposure of the existence of structural elements that could be soluble as a result of contact with precipitation (e.g., uncoated copper roof). If the dissolved metals or other

Figure 4 - Table of contents and excerpts from NEC Guidance

The guidance document addresses the subjects included in these comments.

In addition, the Department has published a “[Hotspot Guidance](#)”³,” which addresses related concerns raised in certain comments.

**Stormwater Pollution Prevention
 Guidance**

- Vehicle Maintenance and Repair, Fueling, Washing or Storage*
- Loading and Unloading, Outdoor Storage*
- Miscellaneous Wash Waters*



Figure 5 - Cover page of Hotspot Guidance

Comment 19: Lack of Guidance for Assisting in Preparation of the NEC.

The commenter quotes Dr. Robert Roseen’s criticism of the 20-SW permit, suggesting that the Department requires no treatment of stormwater prior to discharging to groundwater.

3

Response: This issue is addressed in the Department’s Design Manual.⁴ Specifically, the Design Manual requires any infiltration practices to consider certain issues.

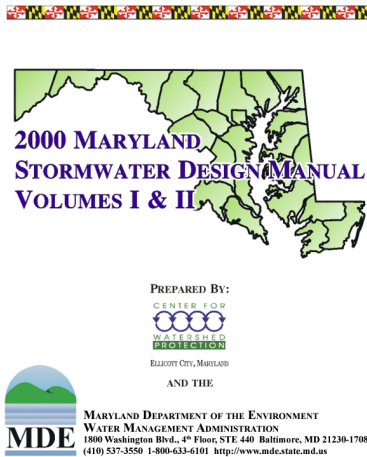


Figure 6-Cover page of the State's Stormwater Design Manual

For example, in Chapter 4, Table 4.3 “BMP Selection – Stormwater Treatment Suitability,” the Design Manual includes specific callouts for hotspot considerations for each practice that a designer may consider.

In addition, each practice also lists these considerations, such as the example here for M-2 “Submerged Gravel Wetlands,” one of the micro-scale practices in Chapter 5 of the Design Manual.

- **Drainage Area:** The drainage area should be large enough (e.g., one acre) to maintain submerged flow conditions.
- **Hotspot Runoff:** Submerged gravel wetlands without a liner should not be used to treat hotspots that generate higher concentrations of hydrocarbons, trace metals, or toxicants than are found in typical stormwater runoff and may contaminate groundwater.



Figure 7 - Excerpt from the Design Manual with Hotspot consideration

Additionally, the Department’s “Hotspot Guidance” (referenced above in Response to Comment 18), identifies certain situations that require a Department-issued groundwater discharge permit: For example discharges of vehicle wash water (Figure 7) requires a discharge permit.

Grouping – No Exposure Certifications Should not Be Required to Resubmit

Comment 20: One commenter suggests that once an industrial facility receives an NEC exemption, that industrial facility should not be required to have to recertify to continue receiving the NEC exemption.

⁴ https://mde.maryland.gov/programs/water/StormwaterManagementProgram/Pages/stormwater_design.aspx

Response: 40 CFR § 122.26(g)(1)(iii) requires each facility that receives an NEC exemption to “Submit the signed certification to the NPDES permitting authority once every five years.” The Department is the NPDES permitting authority in Maryland, so industrial facilities that receive an NEC exemption must submit the required certification to the Department once every five years.

Grouping – No Exposure Should not Be Allowed for New Sources

Comment 21: The commenter suggests that since new sources are not allowed for watersheds with an established TMDL, then no other discharges should be allowed.

Response: The Department disagrees with the commentors’ suggestion that NEC exemptions should be denied for any new industrial facility because not all industrial activity is exposed to precipitation or runoff. Furthermore, any new development—whether or not it is exposed to precipitation or runoff—must also comply with State law requirements to ensure environmental site design to the maximum extent practicable pursuant to Title 4, Subtitle 2 of the Environment Article, Annotated Code of Maryland, and COMAR 26.17.02. As discussed above, the no exposure certification (NEC) process allows the Department to distinguish intelligibly between industrial activity that may cause a discharge to waters of the State and industrial activity that does not. This distinction is also inherent in the NPDES permitting program and State law, which regulate the “discharge” of pollutants to waters of the State. *See, e.g.*, Envir. § 9-101(b) (defining “discharge”); 40 C.F.R. § 122.2 (defining “discharge” and “new discharger”). The NEC process focuses on the exposure of industrial activity to stormwater (as provided in 40 CFR § 122.26) because it is the situation where a “discharge” is most likely to occur (and is therefore regulated), but the Department has also revised the 20-SW permit’s NEC provision to require NEC applications to include additional information (SIC code, receiving water, impairment(s)/TMDL(s) for receiving waters, EJ Score, and location of the Base Flood Elevation) so the Department can evaluate the relative risk of such facilities holistically in tandem with the exposure of industrial activity to stormwater. The Department believes that case-by-case analysis of NEC applications is the correct approach to address these concerns—not a State-wide ban on NEC eligibility. The Department also notes that a universal ban on NEC eligibility for new industrial sources could disincentivize these facilities from covering their operations to prevent stormwater from contacting industrial activity in the first place—a desirable outcome that the Department seeks to promote to reduce water pollution. The Department further notes that not all industrial activities can be physically covered, and the retention of all stormwater onsite may be impracticable given site conditions: each industrial facility is unique, and the Department will continue to evaluate NEC applications on a case-by-case basis as appropriate.

In regard to the commentors’ assertions about the Chesapeake Bay TMDL, the Department notes that stormwater is part of an aggregate wasteload allocation. In addition, the Phase III WIP, page 36 in Chapter VI “Accounting for Growth” notes that new construction must meet the State’s stormwater management requirements, which require environmental site design to the maximum extent practicable to control stormwater. In this way and under these conditions, development is

allowed to continue. In addition, providing the incentive for exclusion by condition of no exposure will ensure no additional pollutants are discharged, to the benefit of the receiving waters. Finally, per Part I.C of the 20-SW permit, a registrant is only eligible to discharge to impaired waters if they receive an affirmative determination from the Department that the discharge will not contribute to the existing impairment. If an industrial facility discharges to impaired waters in an overburdened community, the Department will post the data and determination of eligibility on the Department's website.

Grouping – No Exposure Eligibility for Transportation Operations

Comment 22: The commenter believes the state should be consistent with the federal guidance and allow transportation operations to apply for the exemption.

Response: This was discussed at length in the tentative determination response to comments. As a result of those comments, the Department has amended the guidance for no exposure certifications to reflect that operations which pose less risk—such as transportation facilities that conduct minor vehicle maintenance, do not involve the replacement of lubricants or fuels, electric vehicle maintenance, and new transportation facilities that provide parking inside for all vehicles—may qualify for the NEC exemption. However, vehicles that are parked outside to await maintenance are still considered exposed and are not eligible for an NEC.

3. COMMENT CATEGORY – Environmental Justice.

Comment 23-24: The commenters note impacts of industrial activities on disadvantaged communities, suggesting air pollution permits, inspections, and cumulative impacts be given heightened consideration in the 20-SW permit.

Response: These comments are a consolidation of various concerns. Cumulative impacts are discussed later in this document. In addition, the 20-SW permit includes considerations for EJ communities. For example, the requirement to submit comprehensive annual reports is specific to facilities in EJ communities, required in Part V.A.2.b. The 20-SW permit also protects water quality regardless of the community it is in. The requirements for increased transparency focus inspections on these sites to inform the Department's compliance and inspection efforts.

Comment 25: This comment suggests that the 20-SW permit does not reflect the Department's 2022 Environmental Justice Policy objectives with respect to existing inequities, compliance, or pollution reduction.

Response: The 20-SW permit addresses the Department's objectives set forth in the 2022 Environmental Justice Policy in multiple ways. First, the 20-SW permit NOI and No Exposure Certification application processes incorporate the EJ Score consistent with recent legislation. In addition, applicants must provide information about the quality of receiving water to ensure their discharges are consistent with receiving water quality. Third, the 20-SW permit imposes enhanced benchmark monitoring and the new AIM process to escalate water pollution control

measures in response to monitoring results. Fourth, the 20-SW permit includes enhanced transparency measures, including signage and publication of annual comprehensive site evaluation reports. Finally, the 20-SW permit imposes modern technological and water quality-based pollution controls on industrial runoff—these measures are appropriately geared toward protecting water quality at each facility consistent with the NPDES program.

Several commentors also discuss enforcement of the 20-SW permit in overburdened communities. Enforcement in overburdened communities is a priority for the Department. However, enforcement is a distinct issue from the Department's decision to issue the 20-SW permit, which is the decision before the Department in this proceeding. Some commentors also urge the Department to focus financing or grants in overburdened communities. Similar to enforcement, the distribution of available resources to the communities with the highest need is a priority for the Department. However, these issues are also beyond the decision to issue the 20-SW permit, which is the decision before the Department in this proceeding.

Comment 26: This paragraph is an introduction to the suggested additional controls that could be added to the permit. It restates much of the background for EJ work both nationally and locally.

Response: This is more of an introduction than a specific request. The suggested controls follow in the various comments below.

Grouping – Need to Expand the EJ Areas of Concern

Comment 27-29: The commenters note that the requirements to submit comprehensive annual reports or for use of third parties to submit verification sites meeting NEC only apply to a minority of facilities in the EJ areas. They suggest requiring all facilities in EJ areas to monitor their pollution and submit an annual report to the Department and even suggest that the EJ area be expanded.

Response: Permittees must conduct a comprehensive site compliance evaluation once a year. The evaluation must be performed by qualified personnel who possess the knowledge and skills to assess conditions and activities that could impact stormwater quality at the facility and who can evaluate the effectiveness of all existing BMPs. The personnel conducting the evaluation may be either facility employees (such as pollution prevention team members) or contractors. A comprehensive annual report must be written summarizing the scope of the evaluation, name(s) of personnel performing the evaluation, the date of the evaluation, and all observations relating to the implementation of the SWPPP. Based on the results of the evaluation, the SWPPP must be modified as necessary. Permittees must include a summary of any incomplete actions remaining related to Corrective Actions triggered under Part IV and include the AIM Documentation as required under Part IV.C.

After evaluating the comments received, the Department has revised the 20-SW permit to require each regulated facility that is located in an overburdened community to submit its comprehensive annual report to the Department via NetDMR, or—if the facility is not required to report its

benchmark monitoring results via NetDMR and accordingly has no NetDMR account—through email (swppp.permit@maryland.gov) to the Department’s permitting Division. The Department has also revised the no exposure certification (NEC) requirements in the 20-SW permit as discussed in the responses above. These changes expand public transparency and regulatory scrutiny while ensuring compliance with the law. The Department also notes that Section 1-701(a)(7) of the Environment Article defines “overburdened community” based on a score that exceeds the 75th percentile for specified indicators within a given census tract. The Department operates within these parameters for purposes of determining the EJ Score.

Grouping – Require Additional Restoration

Comment 30-32: The commenter suggests that all industrial facilities—regardless of size—should have to restore 20% of the facility’s impervious area if the facility operates in an overburdened community.

Response: The Maryland Phase III [Watershed Implementation Plan \(WIP\)](#)⁵ establishes impervious surface restoration as the state-wide pollution control strategy to reduce nutrient and sediment pollution to the Chesapeake Bay for the Stormwater Sector. For stormwater associated with industrial activity, the WIP identified industrial facilities as potential sources of nutrient reductions. Therefore the 12SW and 20SW permits require facilities [restore 20% of their impervious surface area and maintain that restoration](#)⁶ consistent with the WIP.

The Department has decided not to impose the restoration requirement on facilities less than 5 acres in stormwater permits, nor require additional restoration for industrial operators beyond the WIP requirement for 20%. Industrial facilities often have difficulties with restoration due to the lack of available onsite surface area to restore due to the nature of industrial operations. In addition, unlike MS4 discharges—which predominantly include sediment and nutrients—industrial sources may be more likely to include hazardous substances that may be undesirable to infiltrate to groundwater via traditional best management practices. As such, there are cases where *increasing* impervious surfaces at industrial sites, such as roofs to cover pollutant sources, or additional paved work areas to make clean-up easier, are more beneficial to surrounding communities and receiving water quality. The restoration requirement is also a state-wide strategy to reduce nutrient and sediment pollution to the Chesapeake Bay; thus, it is not designed to achieve localized benefits in overburdened communities.

Grouping – Transparency Alternatives

Comment 33: Where to Post Reports: Two commenters requested that the Annual Comprehensive Site Compliance Evaluation prepared by industrial facilities be posted to the Department’s website for MS4s and other interested parties to access.

⁵ <https://www.epa.gov/chesapeake-bay-tmdl/chesapeake-bay-watershed-implementation-plans-wips>

⁶ <https://mde.maryland.gov/programs/Water/TMDL/TMDLImplementation/Pages/Phase3WIP.aspx> (appendix B)

Response: These suggestions address implementation of the 20-SW permit as opposed to the requirements of the 20-SW permit itself. Regardless, the Department agrees that such reports should be made available to MS4s and other interested parties to access. As noted above, the Department has revised the 20-SW permit to require each facility that is located in an overburdened community to submit its Annual Comprehensive Site Compliance Evaluation to the Department, so the number of such reports will increase. These decisions are discussed above in greater detail. Consistent with the commentors' recommendations, the Department also plans to begin uploading these reports to the Department's website. This process will become easier once the Department implements eNOIs for the 20-SW permit. The Department also provides access to various reports that are uploaded by operators under the 20CP, the construction stormwater NPDES discharge permit that the Department administers. The 20-SW permit provides the option for reports to be uploaded through the eNOI system once it becomes available.

Comments 34-36: Additional Signage Requirements: The commenter suggests requiring industrial facilities to post a sign that is visible from a public road with the name of the facility, the facility's 20-SW permit number, a description of the purpose of the industrial stormwater permit, and the Department's phone number and email to contact for complaints.

Response: Signage is required for all sites (Part II.G). The sign must include the Department's website permit portal and the facility's unique registration number, so it will be possible to pull up information from the facility's authorization. There is also a requirement to post a contact name and phone number for those who want to obtain additional information. There is no single phone number to use for calling in complaints, as different issues may require a different response from different State or local government agencies depending on a facility's location or the issue(s) identified by the caller. Accordingly, the Department has determined that no changes are necessary to address these comments.

Grouping – Increase Benchmarks for All Facilities

Comment 37: Monitoring for Pollutants: The commenter suggests that industrial facilities should be required to monitor for pollutant discharges from their respective facilities that potentially contribute to an impairment in receiving waters where the facility discharges.

Response: The 20-SW permit requires facilities to monitor for these pollutants in Part V.B.3. Accordingly, no change has been made in response to this comment.

Comment 38-41: Universal Benchmarks: The commenters suggest that the 20-SW permit require additional monitoring for every site, including benchmarks for pH, sediment (total suspended solids), and total organic carbon, as the EPA provided in its Multi-Sector General Permit (MSGP).

Response: Benchmarks apply to the industries identified by EPA or the Department as the sites with the largest potential for pollution. The commentors' reference to EPA's MSGP suggests that EPA implemented universal benchmarks for pH, sediment (TSS), and total organic carbon

(TOC). However, the MSGP requires monitoring for chemical oxygen demand (COD), not TOC. In addition, the MSGP only requires monitoring for pH, TSS, and COD within specific industries (Sectors B2, C5, D2, E3, F5, I1, J3, L2, N2, O1, P1, R1, T1, U3, V1, W1, X1, Y2, Z1, AB1, AC1 and AD1) (Refer to EPA MSGP Final Factsheet Page 5). As indicated in EPA’s permit fact sheet, EPA intends to use the data collected to inform future MSGP permits. (Refer to Page 10 of the EPA MSGP Fact Sheet). As discussed in the Department’s fact sheet for the 20-SW permit (page 17) dated July 8, 2020, the Department also intends to use this data for the same reason. The EPA’s MSGP also allows for discontinuation of benchmarks (Part 4.2.2.3.a.i) consistent with MDE in the 20SW. What is required for every site, is the use of visual inspections for evaluation of runoff, to determine if their controls are adequate. The quarterly visual assessment (Part V.1 and 3) are inspections requiring samples of the stormwater be taken and evaluated for the characteristics (color, odor, etc.) on the form found on Appendix B of the permit.

A commenter suggests there are invisible pollutants such as dissolved metals that are not addressed with the visual monitoring. However, metals are addressed for selected industries with benchmarks and on a case-by-case basis if the Department identifies reasonable potential based on best professional judgement. The visual monitoring results are immediate (no lab required) and require corrective actions based on these documented observations. Accordingly, the Department believes that no change should be made to the 20-SW permit in response to these comments.

Grouping – Require Individual Permits

Comment 42-46: The commenter addresses certain existing industrial facilities and requests that the Department require individual permits for industrial facilities located in overburdened communities.

Response: The comments that are subject to the Department’s consideration in this proceeding relate to the 20-SW permit. The Department notes that issues with specific industrial facilities are addressed on a case-by-case basis for each facility when it applies for coverage under the 20-SW permit, and, accordingly, such situations are beyond the scope of the current decision before the Department. The 20-SW permit requires site specific controls to be established and allows the Department to apply additional limits for all operators, based on the State’s Water Quality Standards. (Part III.B.2). The 20-SW permit also addresses what triggers an individual permit, such as a site subject to ELGs (Part I.C.2 of the permit and COMAR 26.08.04.09 (B)(1)(a)), or sites discharging non-stormwater (Part I.C.3 of the permit). In addition, for sites with benchmarks, there are specific AIM steps required, which can lead to an individual permit based on data (Part IV.B.3.b.ii). Given this framework, the Department believes that a blanket requirement for individual permits based solely on a facility’s location would be unreasonable.

Comment 47: The commenter points to concerns with sites that may contribute to pollution loads.

Response: Part I.C.5 of the 20-SW permit requires new dischargers to impaired waters to provide certain documentation to demonstrate that they will not contribute to an impairment. Part

I.G.1 of the 20-SW permit authorizes the Department to require additional control measures to meet water quality standards. The Department believes that these provisions are sufficient to address this comment, and, accordingly, no additional changes have been made to the 20-SW permit.

Grouping – Require More Frequent Monitoring and Reporting

Comment 48-50: Some comments suggest adding substantive enhanced monitoring requirements. These comments also allege that there are frequent monitoring violations which have not triggered formal enforcement proceedings.

Response: Part III.B.2 of the 20-SW permit requires site-specific limits based on receiving water quality and authorizes the Department to establish site specific limits based on receiving water quality. The 20-SW permit also authorizes the Department to establish monitoring requirements based on receiving water quality. In addition, requirements may also be established based on documented impairments as provided in Part III.A of the 20-SW permit. Additional controls or limits may be established as TMDLs are written and wasteload allocations (WLA) are established. As noted above, enforcement matters are beyond the scope of this response to comments, which address the provisions of the 20-SW permit itself. As such, the Department believes that the monitoring requirements in the 20-SW permit are sufficient, and the Department has not made additional changes to the 20-SW permit in response to these comments.

4. COMMENT CATEGORY – Cumulative Impacts.

Comments 51-60: Conduct a Cumulative Impacts Analysis. The commenters point to an array of potential impacts on water quality due to concentration of industrial activity and allege that concentrated industrial activity occurs in overburdened communities.

Response: As discussed above, any census tract where the score is 0.76 (76%) or higher is an overburdened community. Some comments contend that the EJ Score process should look beyond the census tract where a facility is located and consider the surrounding census tracts, too. However, Section 1-701(a)(7) of the Environment Article, Annotated Code of Maryland defines “overburdened community” based on “census tract.” Consistent with this statute, the Department uses the census tract where a facility is located to determine the EJ Score. The Department also evaluates facilities based on the relative risk (based on SIC number, etc.) and the receiving water(s)—and MS4(s), if applicable—that the facility discharges to (*see* discussion of no exposure certification process—above). If an individual facility is located on multiple census tracts, then that facility must also review the EJ Scores for each census tract where the facility is located, and provide the highest EJ Score. If a facility is located in an overburdened community, then the 20-SW permit requires the facility to submit the comprehensive evaluation to the Department. The Department also retains authority to reject no exposure certifications based on a case-by-case analysis (*see* above), and the Department may also require facilities to obtain a discharge permit on a case-by-case basis or require an individual permit if a facility applies for coverage under the 20-SW permit or is already covered under the 20-SW permit. *See,*

e.g., COMAR 26.08.04.08D; 09B(1). These decisions are necessarily site-specific based on each facility's risk, the characteristics of receiving water, and related factors.

The Department has a statewide monitoring strategy for water quality⁷ as part of the overall implementation of water quality standards.⁸ Maryland's water quality monitoring programs are designed to support assessment of all State waters relative to Maryland's Water Quality Standards (Code of Maryland Regulations Title 26, Subtitle 08) and addresses specific resource management and regulatory responsibilities under the federal Clean Water Act. This Strategy includes the programs, processes and procedures that have been institutionalized to ensure State monitoring activities continue to meet defined programmatic goals and management objectives. It is comprehensive in addressing monitoring for all water body types, including rivers and streams, lakes, tidal waters, ground water and wetlands. The 20-SW permit is established consistent with this [statewide strategy](#)⁹, and information obtained through benchmark monitoring pursuant to the 20-SW permit will be used to further inform the Department's assessment of water quality impacts from industrial sources. Some comments suggest that as part of the overall evaluation at a watershed scale analysis, further detail should focus on concentrated industrial areas to evaluate local impacts. However, the analysis suggested is beyond the scope of the permitting process; instead, it would be part of the statewide strategy. The permit does require additional monitoring when discharging to impaired waters. The permit does allow for additional controls when there are impacts to Water Quality Standards. Specifically, provision (Part I.G.1) allows the Department to require additional control measures to meet water quality standards.

Comments 61-62: Exclude Coverage for Sites Based on Cumulative Impacts. The commenters suggest denying permits based on cumulative impacts in EJ areas.

Response: As discussed in the response above, the Department requires 20-SW applicants, and no exposure certifications (NEC), to submit the EJ Score for the census tract where the facility is located (Part II.A.1.a). The Department has also revised the 20-SW permit's NEC provisions to ensure the Department has access to information to evaluate NEC applications on a case-by-case basis, as appropriate (see above). As such, the Department will continue to track facilities based on census tract consistent with State law and evaluate facilities as appropriate under that framework. The 20-SW permit also has provisions that must be met to gain coverage. Specifically, Part I.C.5 requires new dischargers to impaired waters to provide certain documentation that they will not contribute to an impairment. (See also See 40 CFR 122.2) Part I.G.1 of the 20-SW permit further provides that the Department may deny coverage under the 20-SW permit, require coverage under an individual permit, or otherwise require additional controls to meet water quality standards. In sum, any facility that discharges to impaired waters must discharge in a manner consistent with the water quality standards of receiving water. A facility that violates these requirements is subject to enforcement.

⁷ <https://mde.maryland.gov/programs/water/TMDL/MD-AWQMS/Pages/index.aspx>

⁸ <https://mde.maryland.gov/programs/water/TMDL/WaterQualityStandards/Pages/index.aspx>

⁹ https://mde.maryland.gov/programs/water/TMDL/MD-AWQMS/Documents/Maryland_Monitoring_Strategy2009.pdf

Accordingly, the Department respectfully disagrees with the commentors' argument that facilities should be denied coverage under the 20-SW permit based solely on location—the 20-SW permit regulates discharges from industrial facilities to waters of the State based on applicable technology and water quality-based standards for purposes of water pollution control, and facilities must meet those criteria to operate lawfully. These requirements are based, *inter alia*, on the type of discharge (stormwater associated with industrial activity et al.), the type of facility (e.g., SIC number), the pollutants in the facility's discharge, and the quality of receiving waters. The cumulative impact of industrial stormwater discharges is necessarily considered in this analysis because permittees must discharge consistent with receiving water quality, which is itself based on the Department's ongoing evaluation of waters of the State consistent with the continuing planning process under Part 303(d) of the federal Clean Water Act.

Comment 63: Require Approval of Plans or Reports. The commenter suggests facilities seek the Department's approval of each facility's monitoring plans and reports.

Response: The 20-SW permit establishes specific requirements for plans (i.e., SWPPPs (Part III.C)) and reports (Part V.B.4)).

As discussed in the 20-SW Permit Fact Sheet (Pages 60-69), Part III.C of the permit requires the discharger to develop a Stormwater Pollution Prevention Plan (SWPPP) to document the specific control measures dischargers will use to meet the limits contained in Part III.A and Part III.B of the permit, as well as documenting compliance with other permit requirements (e.g., monitoring, recordkeeping, reporting). The SWPPP itself does not contain effluent limits; rather, the SWPPP is a tool to assist the permittee and the Department in ensuring and documenting that effluent limits are met. This documentation must be kept up-to-date. Where control measures are modified or replaced, for instance in response to a Part IV.A triggering condition, such changes must be documented in the SWPPP. See Part III.C.8. If permittees fail to develop and maintain an up-to-date SWPPP, they will have violated the permit. This recordkeeping violation is separate and distinct from a violation of any of the other substantive requirements in the permit (e.g., effluent limits, corrective action, inspections, monitoring, reporting, and sector-specific requirements).

Certain corrective actions (Part IV.B.3.b.i) and relief from benchmark monitoring (V.B.2) require Department approval. Part I.C.5 of the 20-SW permit also requires new dischargers to impaired waters to provide certain documentation that they will not contribute to an impairment. This facilitates a deeper review of plans for new operators prior to approval from the Department. The Department reviews plans and reports for adequacy - to determine if application for coverage under the permit is complete, i.e. to determine if the plans and/or reports satisfy the terms of the permit..

5. COMMENT CATEGORY – Climate Change Concerns.

Comment 64: Simplify and Streamline the SWPPP Part. “Regarding the other sections re-opened on limited remand, Comprehensive Site Compliance Evaluation – Part V.A.2.b and

Stormwater Pollution Prevention Plan (SWPPP) Requirements – Part III.C, if anything, the process governed by those sections should be simplified and further streamlined. Any additional changes to the permits based on comments for those two sections would re-open the permit and subject it to further public notice for comment, causing yet further delay in the 20-SW finalization.”

Response: The Department has revised these sections as described above to include certain cross-references for the sake of simplicity, but these changes are not substantive. These sections are written to establish specific requirements and guide permittees—whose respective facilities, locations, and operations may vary considerably throughout the State—within the parameters of these requirements. After review, the Department does not believe that further changes to these sections are appropriate.

Comment 65: Add the Chesapeake Bay Restoration Requirements. The commenter alleges that the 20-SW permit removes certain restoration requirements relating to restoration of impervious surface area.

Response: The 20-SW permit (Part III.A) requires permittees that are in the Chesapeake Bay Watershed, are 5 acres or greater, are within a Phase I or Phase II municipal separate storm sewer system (MS4) jurisdiction, and that are not owned by an MS4, to restore 20 percent of their untreated impervious surface. The restoration of these surfaces reduces nutrients and sediments consistent with the Chesapeake Bay WIP. The substantive requirements in these provisions remain un-changed from the 12-SW permit requirements. The permit taken in conjunction with the newly designated jurisdictions under the Phase II MS4 program expands the scope of facilities subject to restoration. It requires that the practices be maintained. (Part III.B.1.b.iii)

Grouping – Incorporate More Recent Rainfall Data

Comments 66-72: The commenters assert that the 20-SW permit “uses outdated information” that does not accurately reflect the “intensity, frequency and duration of today’s storms.” They suggest providing “more specific guidance” by updating the Maryland Stormwater Design Manual, Volumes I and II (the “Design Manual”) to reflect recent data (specifically to account for increased precipitation). One commenter asserts that the lack of guidance causes uncertainty that has “serious implications” for all of Maryland’s communities.

Response: Updating the Design Manual is outside the purview of the 20-SW permit. The Design Manual is an external document that exists separate and independent from the 20-SW permit. The Department is taking thoughtful and careful steps to adopt updated precipitation data and evaluate whether the current stormwater design standards are appropriate given recent data. In addition, the Department is in the process of reviewing the State’s current stormwater management regulations with a Stakeholder Consultation Group (SCG) for A-StoRM (Advancing Stormwater Resiliency in Maryland). The Department is performing these steps as part of the process prescribed in Section 4-203(b)(4)-(c) of the Environment Article, Annotated Code of Maryland, which requires, among other things, consultation with specific groups and

stakeholders before regulations are proposed. However, the Department’s decision to adopt regulations or standards in the Design Manual is a separate process that is distinct from the Department’s determination to issue a discharge permit pursuant to Title 1, Subtitle 6 of the Environment Article. Accordingly, the Department disagrees respectfully with these comments. The Appellate Court of Maryland reviewed identical arguments challenging the Department’s final determinations to issue certain Phase I municipal separate storm sewer system (MS4) permits and ruled in favor of the Department. *See, e.g., Matter of Blue Water Baltimore, Inc.*, 260 Md. App. 246 (2024).

Grouping – Requiring SWPPP Updates Based on Recent Floods

Comments 73-77: The commenters provide several suggestions, which react to changes in weather patterns. The suggestions range from tidal exclusion and other potential impacts to sites based on flooding.

Response: The 20-SW permit includes a requirement to update control measures (Part III.B.1.a.viii) and the SWPPP based on these fluctuations in rainfall. In cases where there is tidal flooding, this would mean locating materials in higher elevation locations. The Department has added a cross reference to this design requirement to the SWPPP requirements (Part III.C).

Grouping – Require More Green Infrastructure

Comment 78: These comments suggest that impervious surface at industrial sites may cause flooding and suggest that increased use of green infrastructure at industrial sites can reduce flooding.

Response: The Chesapeake Bay Restoration requirements (Part III.A) have a basis in water quality and are enforceable conditions of the permit. The 20-SW Restoration Requirements of the permit supports the efforts to address the Chesapeake Bay TMDL. As noted by the commentor, green infrastructure has the potential to reduce flooding. However, the restoration requirements are meant to reduce pollutant loads to the Chesapeake Bay. Flooding is not regulated by the permit and is the subject of a much more inclusive study of stormwater infrastructure and dam safety.

6. COMMENT CATEGORY – Concerns about the Permit and Enforcement.

Grouping – Increase Enforcement and Compliance Efforts

Comments 79-85: These comments make generalized critiques of the 20-SW permit, criticize the enforcement of the 20-SW permit, and recommend more aggressive enforcement measures.

Response: As discussed above, enforcement is a subject separate from permit issuance and the determination of appropriate pollution control limitations to protect water quality. One comment specifically cites Part V.A.2.B. of the 20-SW permit (Comprehensive Site Compliance

Evaluations). This provision of the permit requires the permittee to document various evaluations and corrective actions taken by the operator. This is important in that it identifies issues faced by the operator and how they are dealing with them. It is important for the Department and the community to know these operational issues and how they may impact local waters and environment.

The 20-SW permit does include the various civil and criminal liability and penalties as provided under the Clean Water Act. These conditions begin with Part VI.A (Duty to Comply) and go through Part VI.X (Penalties for Falsification and Tempering). These conditions are required in all NPDES permits and provide the backbone to enable enforcement of permit conditions. In light of the enforcement and compliance mechanisms provided in the 20-SW permit and the Department's authority in Title 9, Subtitle 3 of the Environment Article, Annotated Code of Maryland, the Department believes that the 20-SW permit's enforcement provisions are appropriate. As such, the Department has not made changes to the 20-SW permit in response to these comments.

Grouping – Exclude Coverage for Noncompliance

Comment 86: The commenter suggests revoking or refusing coverage under the 20-SW permit for facilities that have been in significant non-compliance in the past 5 years and are in overburdened communities.

Response: Both the state and federal statutes, CFR and COMAR, and the permit itself have permit revocation/termination provisions, which the Department can invoke if the circumstances of any particular facility warrant it.

Grouping – Put Resources to Address Unpermitted Sites

Comments 87-88 : The commenters support efforts to identify and bring into compliance sites which have thus far not obtained coverage under the 20-SW permit.

Response: The Department continues to search for and bring into compliance sites that do not have coverage under the 20-SW permit. The Department welcomes efforts from the public to assist in these efforts.