

MARYLAND DEPARTMENT OF THE ENVIRONMENT
WATER and SCIENCE ADMINISTRATION

Invitation to Comment on Subjects Related to the Pending Renewal of the General Discharge Permit for Discharges from Stormwater Associated with Construction Activities NO. 20CP (NPDES No. MDRC)

On September 25, 2020, the Department published notice of its tentative determination to renew the current general discharge permit (14GP) for stormwater associated with construction activities and replace it with proposed General Discharge Permit No. 20CP (NPDES No. MDRC). The proposed permit applies to stormwater discharges from construction activities in the state of Maryland that will disturb one or more acres of land, or will disturb less than one acre of land but are part of a common plan of development or sale that will ultimately disturb one or more acres of land. The Department held a public hearing regarding the tentative determination on November 10, 2020. Notice of the hearing was included in those publications. The public comment period concluded on December 24, 2020. The Department is preparing a final permit determination and is now informally seeking comments limited to the four areas detailed below prior to issuing a final permit.

The boxes below each subject area contain proposed edits to language from applicable sections of the permit as compared to the tentative determination.

Addressing Climate Change - The Department is considering requiring registrants to be responsive to any updates in the Design Manual and E&SC Handbook, by updating E&SC and SWM plans every 3 years. Proposed edits from the tentative determination permit are below. Background: The controls required by the State for Erosion and Sediment Control are based on historical trends of precipitation and the effectiveness of the controls. As States requirements are updated, the plans will need to be revised accordingly. This condition takes advantage of the current regulatory requirement to reapprove plans every 3 years (COMAR 26.17.01.08F(1)).

E. E&SC Requirements for Coverage

Once construction has commenced, it is a condition of this permit that ~~E&SC erosion and sediment control and SWM stormwater management~~ plan approvals be kept up to date. ~~Approved E&SC plans remain valid for 3 years from the date of approval (COMAR 26.17.01.08), after that time approvals may be extended or renewed by the approval authority. During the extension or renewal of the E&SC plan, you must incorporate any changes to E&SC due to modified sizing criteria for a 2-year or 10-year storm reflected in updates to the ESC Handbook (see Appendix A).~~ Construction activity may not continue if the ~~se~~ plans have expired, but may resume once plans are renewed without payment of an additional fee as long as coverage under this General Permit is still in effect.

Timeframes Related to Gaining Authorization Under This Permit - The Department is considering revising the 14 day public notice period to begin after we receive a complete submission, which includes an approved E&SC plan, a signed SWPPP, and completed anti-degradation documentation. Proposed edits from the tentative determination permit are below. Background: Securing complete plans prior to public notice will allow all interested members of the public time to fully review the complete submission. This will allow a more informative review by the public. Note: In the current permit the 14 days public notice period began prior to achieving an approved E&SC plan.

1. ~~Complete NOI Package. Certification of Erosion and Sediment Control Submission to Approval Authority.~~ The Department will begin processing a Notice of Intent (NOI) to be covered under this general permit ~~when once the NOI is complete (no errors) and the applicant provides verification that the E&SC plan for the project has been approved (i.e. scanned signature page, or a signed letter) by the appropriate approval authority certification that a final erosion and sediment control plan (E&SC plan) was submitted to the appropriate approval authority (see Part II.A.4.a), and if required has paid the appropriate application fee, provided the signed Antidegradation Checklist (see Part II.A.4.b) and signed SWPPP (see Part II.A.4.c). If an NOI is submitted before the E&SC plan is submitted to the approval authority,~~ The Department will not accept it for begin processing the NOI package and will send notice to the applicant that the NOI is incomplete and will not be processed until the required information is provided.

Threatened and Endangered Species Clarification - The Department is considering revising the proposed permit to further clarify requirements regarding considerations for threatened and endangered species. This includes using

MERLIN "<https://dnr.maryland.gov/Pages/Merlin.aspx>" or contacting the Department of Natural Resources (DNR) to identify where threatened and endangered species and/or designated critical habitat are located. If rare, threatened, or endangered species and/or their designated critical habitat is identified, the applicant must consult with DNR to determine any additional regulatory requirements and include these areas on the E&SC plan, and the SWPPP if applicable. Proposed edits from the tentative determination permit are below. Background: Although the E&SC Handbook specifies protections must be considered, the requirements are vague.

- n. ~~The permittee shall~~**You must** consider Federal and State listed rare, threatened, and endangered species and/or ~~designated critical habitat their habitat~~ in the design of the ~~E&SC erosion and sediment control~~ plan in accordance with the ~~DESIGN METHODOLOGY in the 2011 ESC Handbook Standards and Specifications for Soil Erosion and Sediment Control, Section A-4. You are encouraged to~~ must use MERLIN "<https://dnr.maryland.gov/Pages/Merlin.aspx>" or ~~contact the Department of Natural Resources (DNR) to identify where threatened and endangered species and/or designated critical habitat associated habitat are located or consult directly with DNR.~~ If rare, threatened, and endangered species and/or ~~designated critical habitat their habitat~~ is identified, ~~the permittee you must shall~~ contact the ~~DNR appropriate approval authority Department of Natural Resources (DNR)~~ to determine additional regulatory requirements. ~~You must also to identify indicate the areas of special concern on the E&SC plan, and the SWPPP (Part III.F.3.i) if applicable, the areas where protections must take place based on consultation with DNR, in addition to include required information in the SWPPP (Part III.F.3.i).~~

Water Quality-Based Limits - The Department is considering including narrative surface water quality criteria in Maryland's water quality standards COMAR 26.08.02. Proposed edits from the tentative determination permit are below. The Department is also considering revisions adopting EPA's turbidity benchmarks related to dewatering. Specifically the EPA Construction General Permit (CGP) Section 2.4 "CONSTRUCTION DEWATERING REQUIREMENTS", Section 3.3 "TURBIDITY BENCHMARK MONITORING FOR SITES DISCHARGING DEWATERING WATER TO PROTECT THE WATER QUALITY OF SENSITIVE WATERS", Section 5.1.5 "CONDITIONS TRIGGERING CORRECTIVE ACTION", Section 5.2 "CORRECTIVE ACTION DEADLINES", Part 7.2.8 "Procedures for Turbidity Benchmark Monitoring from Dewatering Discharges". and Appendix K "Turbidity Monitoring Report Form". Background: The tentative determination permit renewal added water quality based limits, but from the comments received more clarity may be required.

B. Water Quality-Based Limits.

1. General Effluent Limitation to Meet Applicable Water Quality Standards

Discharges must be controlled as necessary to meet applicable water quality standards. In the absence of information demonstrating otherwise, the Department expects that compliance with the conditions in this permit will result in stormwater discharges being controlled as necessary to meet applicable water quality standards. If at any time you become aware, or the Department determines, that discharges are not being controlled as necessary to meet applicable water quality standards, you must take corrective action as required in Parts III.D.1 and III.D.2, and document the corrective actions as required in Part III.D.3.

The narrative surface water quality criteria in Maryland's water quality standards (COMAR 26.08.02) include floating debris, oil, grease, scum, sludge, and other floating materials in amounts sufficient to cause the receiving water(s) to be unsightly; change the existing color to produce objectionable color for aesthetic purposes, or interfere directly or indirectly with designated uses; or elevate temperature which interfere directly or indirectly with designated uses.

The Department may insist that you install additional controls (to meet the narrative water quality-based effluent limit above) on a site-specific basis, or require you to obtain coverage under an individual permit, if information in your NOI or from other sources indicates that your discharges are not controlled as necessary to meet applicable water quality standards. This includes situations where additional controls are necessary to comply with a wasteload allocation in an EPA-established or approved TMDL.

Written comments concerning these potential changes may be considered in the preparation of a final determination if received by Paul Hlavinka by email at paul.hlavinka@maryland.gov or by mailing to Maryland Department of the Environment, 1800 Washington Blvd., Suite 455, Baltimore, MD 21230-1708, or (fax) 410-537-3163, by close of business on or before **Monday, September 12, 2022**.