

**MARYLAND DEPARTMENT OF THE ENVIRONMENT
WATER AND SCIENCE ADMINISTRATION
NOTICE OF FINAL DETERMINATION
General Permit for Stormwater Discharges Associated with Construction Activity**

The Maryland Department of the Environment is reissuing the State/National Pollution Discharge Elimination System (NPDES) General Permit for Stormwater Discharges Associated with Construction Activity. The new permit will be No. 20-CP (NPDES No. MDRC), effective April 1, 2023. This permit replaces the 14-GP, which expired on December 31, 2019. The 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.

A public notice on the tentative determination to reissue the discharge permit was published by the Department's Water and Science Administration (WSA) in September 2020 in newspapers across the State of Maryland. The notice was published in the Maryland Register on September 25, 2020. 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. In preparing a final determination, the Department informally sought additional comments on August 12, 2022, limited to four subject areas, accepting these comments through September 12, 2022. After considering all comments received either in writing or through oral testimony during the comment period, the Department has made a final determination to issue the permit.

Listed below are a summary of the major revisions to the tentative determination included in the Department's final determination:

Climate Change Impacts have been addressed

- Including revising E&SC plans based on updates to the ESC Handbook Standards and Specifications for Soil Erosion and Sediment Control, when the approved plan expires (every 3 years).
- Requirements to account for potential increases in temperature of Use III or Use IV waters due to changes in climate when selecting control measures.

Changes related to Authorization Under This Permit

- The definition for signatory has been updated to be consistent with the Federal and State Regulations, and a duly authorized representative has been added for signing of documents such as SWPPPs.
- The permit now indicates that you list your own related permits for other activities at the site, or if part of a common plan the permit of the owner.
- The permit Part II Table 1, Deadlines for Permit Coverage, NOI Submittal Deadline has been updated to indicate that a complete application is required at least 14 Days prior to construction for the following: new operators, transfers, or an increase in construction activity. Notes indicating that the Department may require additional information or actions prior to approval have also been added.
- The clarification for fees in the permit applies only to single family home builders within a common plan of development, where the common Plan of development E&SC calls out Standard Plans for the lots, and each individual lot is less than an acre.
- The permit requires a completed and signed E&SC, and where applicable a signed SWPPP, signed Antidegradation Checklist, and payment, as part of a complete application, prior to the 14 day public notification period.

- The permit is updated to clarify that a SWPPP maybe used in lieu of an E&SC plan in cases where the facility isn't subject to plans under Title 4, such as structures built on agricultural lands when an approved E&SC isn't available.
- A clarification has been added for when grading may begin on state or federal phased approvals.

Changes related to Technology-Based Limits

A number of clarifications related to technology-based limits were provided, including but not limited to:

- The permit requires that downstream impacts related to potential flooding are minimized for projects that span long periods of time (i.e. more than a half a year).
- The permit has been changed to require advance approval for cationic chemical additives via an NOI amendment request with the associated SWPPP, which must be submitted a week prior to intended use. For approved anionic chemical additives an amended NOI request and a SWPPP must be submitted no later than a week after the product was first used.
- The permit now includes requirements to use MERLIN "<https://dnr.maryland.gov/Pages/Merlin.aspx>" to identify where threatened and endangered species are located along with information on who to consult with from DNR with questions, a requirement to indicate in the NOI if they exist within the project areas, and a requirement to include on the E&SC areas where protections must take place based on consultation with DNR.

Changes related to Water Quality-Based Limits

- Adopting turbidity benchmarks of 150 NTU daily maximum related to dewatering. This includes requirements for taking corrective actions within specified deadlines, procedures for turbidity benchmark monitoring from dewatering discharges and Appendix for "Turbidity Monitoring Report Form".
- In order to clarify the criteria for water quality standards, the permit is updated to include specific reference to COMAR 26.08.02 where the entire standards are found in regulation and in addition states the narrative non-numeric criteria.
- The permit clarifies that Tier II protections are to ensure that existing in-stream water uses and the level of water quality necessary to protect existing uses are maintained and protected (as provided in COMAR Antidegradation Policy Implementation Procedures).

Changes related to Site Inspections and Records

- A number of clarifications on inspection frequency, processes and record keeping were made.

Changes related Corrective Actions

- The permit adds flexibility that records can be in a logbook, a SWPPP, or in electronic form.
- The permit is updated to clarify Part III.D.2.a is one business day.

Changes related to Training and Preconstruction

- The permit clarifies that MDE Compliance Program is the construction program to contact when scheduling a preconstruction meeting.

- The permit language is modified to specify that the qualified person needs to be on-site at a frequency and duration sufficient to ensure compliance with the requirements of the SWPPP (if applicable) and E&SC Plan.
- The permit language now states that individuals responsible for compliance with the design be involved on the stormwater team, rather than the designer specifically.

Changes related SW Pollution Prevention Plan (SWPPP)

- Several references to joint liability were updated to be consistent with the updated Federal Permit.
- Inconsistent requirements for contaminated soils have been updated and examples have been included of how to check for contaminated soils provided.
- SWPPP requirements for Common Plans have been updated to indicate each entity working in an area is cognizant that their activities do not compromise any other operators' controls and/or any shared controls. The main developer at a minimum must keep a working SWPPP with all those working within the Development.
- Clarifications on what construction activities are exempt from submitting a SWPPP to MDE.

Changes related to Definitions and Mistakes Made

- Several cross-reference errors were corrected, definitions updated and other minor clarifications were provided.

Any person adversely affected by this final determination may file a petition for judicial review. Petitions for judicial review of a final determination or permit decision subject to judicial review must be filed in accordance with §1-605 of the Environment Article no later than within 30 days after publication of a notice of final determination, and must be filed in a circuit court in Maryland. Petitions for judicial review must conform to the applicable Maryland Rules of Civil Procedure. Failure to file a petition for judicial review will constitute a waiver of any right to a judicial review of this final determination.

The final permit, responses to comments, and associated documentation may be found on the Department's website. To view and print the final permit and response documents, you may use this link <https://mdewwp.page.link/CGP>. Persons seeking to review the final permit and associated file may alternatively do so by contacting Mr. Hlavinka via email at paul.hlavinka@maryland.gov to make an appointment. Copies of documents may be obtained at a cost of \$0.36 per page.

Any questions regarding this final determination should be directed to Paul Hlavinka or Jennifer Nitsch at the Maryland Department of the Environment, Water and Science Administration, at paul.hlavinka@maryland.gov, jennifer.nitsch@maryland.gov or by telephone at 410- 537-3323 between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday.