

North Carolina DEMLR Response to Comments on NPDES Stormwater draft General Permit NCG210000 (2013 Renewal)

Background

NPDES General Permit NCG210000, which regulates stormwater discharges from industrial activities producing timber products, expired on July 31, 2013. The North Carolina Division of Water Quality (DWQ) posted the draft General Permit on the Stormwater Permitting Unit website beginning June 7, 2013. We announced in selected newspapers across the state on or about June 15, 2013 that the draft of the proposed renewal General Permit was available on our website for public comment. DWQ also ran this notice in the June 17, 2013 issue of the North Carolina Register. In addition, beginning in December 2012, we solicited early comment on our upcoming effort to revise NCG21 from the North Carolina Forestry Association (NCFA), an industry interest group that had provided comments in previous renewal cycles of the General Permit. *(Please note that the DWQ stormwater permitting programs have been re-organized into the Division of Energy, Mineral, and Land Resources (DEMLR), effective on a working basis today, August 1, 2013. References in this document to either Division should be understood accordingly.)*

The public comment period closed on July 17, 2013, consistent with the regulatory minimum duration of 30 days.

DWQ revises and reissues our NPDES stormwater General Permits on a five-year schedule. Every five years we solicit public comment, especially from the particular regulated industry sector; we review analytical data from the previous five-year term of the permits; evaluate identified compliance problems and problems in our enforcement of the permits; and seek to improve the effectiveness of the permits as stormwater management tools for the permittees.

EPA Region IV staff in Atlanta was sent the draft General Permit on June 7, 2013. On June 12, 2013, EPA Region IV responded that the agency concurred with the draft permit and had no comments on it. EPA's additional review and approval would be necessary if the proposed final General Permit incorporated significant changes from the draft, or if significant public comments objecting to the permit were received. DWQ concluded that neither of these criteria was met, and therefore further EPA review is not required.

DWQ prepared this summary document both for those that submitted written comments on the draft General Permit, as well as for other interested parties. This document will be posted on our website for public access.

Comments and Responses

DWQ received comments on the proposed draft General Permit from two people in the industry, and from several DWQ Regional Office staff charged with conducting compliance

inspections at the regulated industrial sites covered by NCG21.

In addition, earlier in 2013, DWQ renewed four other industrial stormwater General Permits, and some of the revisions to those permits were incorporated into the June 7, 2013 published draft NCG21 based on the merit of the comment, and for the sake of a consistent regulatory approach across multiple industry sectors.

Commenters addressed just a few aspects of the draft General Permit, with most attention being directed to revisions to the monitoring parameters. DWQ appreciates the time and effort reflected in the comments. The comments are summarized below. Every written comment pertaining to the draft General Permit has been incorporated in the related topics below. We have noted which comments have been included in some form in the final version of NCG21. We have also identified those comments that we did not incorporate, and why.

1. One commenter requested that building wash down water discharges be identified in the permit text as an allowable discharge.

Response: NCG21 only authorizes stormwater discharges. As a matter of information, previous versions of the permit in 1998, 2003, and 2008, as well as the unchanged draft permit text, simply report that while only stormwater discharges are authorized by the permit itself, there may be other kinds of discharges authorized under regulatory provisions other than the stormwater permit. One of these other regulatory provisions would be other NPDES permits, like a NPDES wastewater discharge permit. Another category of discharges authorized by other regulatory means include the 'permit by rule' discharges, which may be found in the North Carolina NPDES program rules at 15A NCAC 2H .0106(f). Under this provision, some discharges are identified which may be permissible without the issuance of any specific DWQ discharge permit. The 'permit by rule' provisions cover air conditioning condensate, foundation drains, landscape irrigation flows, and other innocuous or emergency flows. Building wash down water is not included in that list in North Carolina rule. It's our interpretation that building wash down waters would be considered a wastewater discharge, and are not specifically authorized as a 'permit by rule' discharge, nor are they legitimately considered a stormwater discharge. We see no regulatory basis that would allow us to authorize this wastewater discharge under NCG21.

Result: No change.

2. The same commenter similarly requests that pavement wash down water also be named as one of the allowable discharges under other regulatory provisions. Although not clear, the suggested circumstances seems to be that accumulations of resinous wood fibers on the building would be washed off the building, onto pavement, and into a stormwater discharge outfall, under the proposed authorization provided by NCG21. Commenter notes that the EPA MSGP authorizes both of these discharges.

Response: As we understand commenter's second proposal, the washing of pavement is intended to continue the movement of resinous wood fiber pollutants off the building and into the waters of North Carolina. Again, NCG21 only authorizes stormwater discharges, not wastewater discharges. If other existing regulatory provisions outside of NCG21 authorize the discharge of the pollutants contained in the pavement wash wastewater in these circumstances, then there is no need for NCG21 to include the requested provision. On the other hand, however, consider that if NC rules do not authorize the discharge under the proposed circumstances, NCG21 cannot legally convey an authorization that does not exist in rule.

Result: No change.

- 3. One commenter provided two comments that together observed that whereas NCG22 (old Chip Mill permit) seemed interested in the roundwood inventory at a site, the revised NCG21 seemed focused on bark, chips, and mulch, regardless of the quantity involved.**

Response: That's correct. DWQ's focus is on the small size materials because those are the materials we feel most quickly give rise to polluting potential. The pieces themselves can be transported by stormwater; and the small size presents a comparatively large surface area which can accelerate decay and degradation of the material, giving rise to pollutants more quickly. We are not focused on roundwood quantities in this permit.

Result: No change to the permit. As we understood the commenter, he was making an observation, not requesting a change in the draft permit.

- 4. One commenter noted that NCG22, the old Chip Mill permit, tested for BOD, but the revised NCG21 tests for COD.**

Response: At this time, we feel that COD is the better monitoring parameter for the industry. BOD and COD are two different lab tests that measure almost the same pollution potential. We prefer COD because it captures the pollution potential inherent in lignins and any other semi-refractory materials, which typically BOD does not fully reflect. Both tests are indirect measures of the thousands of organic chemicals that might be present in a polluted stormwater.

Result: No change. Again, we believe that the commenter was making an observation, not requesting a change to the permit.

- 5. One commenter requested that the benchmark and tiered response action structure be eliminated from the permit. He also cited difficulty in implementing a response to a COD exceedance without some visible, concrete expression of the presence and**

cause of the COD exceedance.

Response:

- a) As to the benchmark and tiered response action structure of the permit.
Regulated industrial activities are obligated to keep the pollutants generated by their activities on their sites, not slipping off into the waters of North Carolina when it rains. The use of a benchmark acknowledges that while some small amount of a pollutant may be harmlessly discharged, at greater amounts there would indeed be a potential for an impact on the receiving water. DWQ staff scientists establish the benchmark values based on a review of the best technical literature available for each pollutant or pollutant measure. The tiered response action structure has been developed to allow a permittee several attempts to correct potential pollution problems before involving DWQ staff. Under Tier Three of the permit, the permittee's obligation is to invite the DWQ Regional Office staff to his site to help him identify the cause and feasible remedy for any benchmark exceedances that persist over time. It's important to note that our staff members view a benchmark exceedance as an opportunity for DWQ involvement in the solution to a pollutant problem. We do not view it primarily as an opportunity for a DWQ enforcement action.
- b) As to the difficulty in identifying the cause or a remedy for a COD exceedance due to the difficulty in directly observing it. We appreciate the comment. The comment is exactly consistent with our posture in the tiered response structure, where the permittee's obligation is to call DWQ to his site for help in solving the mystery. For this industry, we think it is likely that COD and TSS exceedances will, to a great degree, track each other. This suggests that in some cases, taking care of the more visible TSS issue may result in improving, if not solving, the concurrent COD exceedance issue.
- c) Additional commentary: Since the introduction of the benchmark and tiered response structure into most of our industrial stormwater permits beginning in 2007, Regional Office staff members have repeatedly commented that the performance of our permittees has improved beyond the levels that were obtained before the benchmark and tiered structure were instituted. We are pleased with that progress generally across all industry sectors, and think that continuation of the structure will result in continued progress.

Result: No change.

6. **The draft General Permit's proposed replacement of pH monitoring with aluminum and zinc monitoring drew the most volume of comments, both from within DWQ and without. Several elements of the discussion were significant in our final determinations, and they are reported below as part of our response.**

Response:

- a) As to removing pH monitoring. Both Regional Office inspectors and our

permittees have commented over the years on the difficulty of obtaining reliable pH measurements from some staff in some industries. In addition, in this industry sector, only ~7% of pH measurements were outside the benchmark range. In contrast, ~30% of COD and TSS measurements were in excess of benchmark values. The presumed source of any pH exceedance would be associated with the degradation of the woody organic materials, since low or high pH industrial chemicals are not a common industrial raw material at sawmills and chip mills. In consideration of these two aspects, DWQ published the draft General Permit without a requirement for pH monitoring. Ultimately DWQ concluded that reliance on just COD and TSS would be sufficient to address the generation of pollution from the industry.

- b) As to removing aluminum and zinc monitoring. DWQ published the draft General Permit with a proposed substitution of aluminum and zinc for pH monitoring. We received comments from both the affected industry and our Regional Office staff suggesting that while the goodness of the metals test might be superior to pH testing, the interpretation of the test results against site conditions was complicated by the widespread presence of both metals in the native soils of North Carolina. The strong opinion of our inspectors is that metals testing serves only to corroborate that native soils are present in the runoff. DWQ ultimately concluded that TSS adequately flags when any kind of suspended solid is in the stormwater discharge, whether originating in native soils, or in industrial materials. Further, it's our judgment that the benchmark and tier structure serves to address the control of that pollutant, and that the permit text provides for a sufficient regulatory response.

Result: DWQ has revised the final permit text to remove the pH monitoring included in the previous final version of the permit; and to remove the proposed monitoring for aluminum and zinc contained in the draft permit. It is our judgment that monitoring for TSS and COD adequately addresses the potential for polluted discharges, while avoiding the complications inherent in the measurement of pH and metals concentrations in stormwater discharges.

Conclusion

DWQ's overall intent in proposing changes to the General Permit was to provide permit requirements that will encourage permittees to respond with prompt corrective action to the discovery of pollutant discharges in excess of the benchmark values. DWQ incorporated public comments on the proposed draft General Permit NCG210000 as indicated above.

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