

**North Carolina Division of Water Quality Response to Comments  
NPDES Stormwater General Permit, NCG160000  
For Asphalt Paving Mixtures and Blocks**

September 10, 2009

**Background**

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

EPA Region IV staff in Atlanta reviewed the draft General Permit without comment. DWQ concluded that additional EPA review and approval would not be necessary unless the proposed final form of the permit incorporated significant changes from the draft, or if significant public comments objecting to the permits were received. Neither condition has been established and further EPA review is not required.

DWQ has prepared this summary document for those interested parties that submitted written comments on the draft General Permit, as well as for other interested parties.

**Comments and Responses**

DWQ received written comments from only Falcon Engineering on the draft General Permit during the announced public comment period. The comments were thoughtful and generally spoke to the potential for implementation difficulties. We appreciate the time and effort reflected in the comments. All written comments pertaining to the revision and re-issuance of the General Permit have been incorporated in the related topics below. DWQ's response to each comment is presented in italics. We have noted which comments have been included in some form in the final version of the General Permit. We have also identified those comments that we rejected, and the basis for doing so.

Part I, Section A: General Permit Coverage

Comment: This section, specifically the fifth paragraph, states "...the facility must identify impaired waters (scheduled for TMDL development) and waters already subject to a TMDL..." The commenter felt the requirement is reasonable during the initial application process, however it could be problematic when TMDLs change during the life of the General Permit. Request DWQ provide notification to those facilities that discharge to water bodies that have newly proposed TMDLs during the life of the General Permit.

*Response: This particular portion of Part I Section A references the requirements of the SPPP, further detailed in Part II A 1 (a). We note that the permit text provides that the SPPP must be reviewed annually by the facility. Our expectation is that at least once per year, as part of the required annual review, the facility will compare DWQ's 303(d) and TMDL lists against their identified receiving water. Presently there is no efficient mechanism in place for DWQ's Stormwater Permitting Unit to notify every permit holder that his particular receiving water has been newly added to either list. DWQ considers that it is a reasonable function of the permittees'*

site manager, or the permittee's environmental staff, or the permittees' environmental consultant, to check these lists once per year, and subsequently update his Site Plan, as required. DWQ has retained the draft language requiring that the permittee note the presence of 303(d) or TMDL waters on his site plan. DWQ does conclude however, that additional communication on this point is warranted. We will include in our Technical Bulletin the notation that the impaired waters scheduled for TMDL development are on North Carolina's 303(d) List and can be found at: [http://h2o.enr.state.nc.us/tmdl/General\\_303d.htm](http://h2o.enr.state.nc.us/tmdl/General_303d.htm)

#### Part I, Section B: Permitted Activities

Comment: This Section references "the Surface Waters of North Carolina" several times. The term is not defined within the body of the permit.

*Response:*

Contact DWQ if you have unusual site circumstances that might call into question the precise definition and General Permit intent concerning 'surface waters of North Carolina'. Generally and in by far the most cases, surface waters can be taken to mean most wetlands plus other waters that intuitively one might call surface waters. At this time, DWQ considers the definitions for related terms provided for in NC statute and NC rule as sufficient, and we conclude that incorporating a precise and legally complete definition of 'surface waters of North Carolina' would provide little additional clarity for most permittees.

At this time DWQ will not incorporate a definition of 'surface waters of North Carolina' in the permit boilerplate.

#### Part I, Section B: Permitted Activities

Comment: The third paragraph of this section states, "the General Permit does not allow discharges determined by the Division of Water Quality to be wastewaters. The discharge and/or disposal of vehicle wash water or vehicle rinse water is not permitted by this General Permit. Wash water and rinse water must be directed to a sanitary sewer system or permitted by a separate wastewater permit issued by the Division. The discharge and/or disposal of any paints, solvents, petroleum, diesel oil or oil/water compounds applied to any surface of the vehicles is not permitted by this General Permit." Is it the intent of DWQ not to include any drainage from material storage piles as a process waste water? Would this apply to drainage as a result of stormwater and/or wetting of piles?

*Response:* Wastewater discharge to surface waters requires a wastewater permit. N.C. General Statutes 143-215.1 require a permit for treatment, disposal, or discharge of waste—directly or indirectly—to waters of the State. DWQ considers wastewater discharges, or circumstances where stormwater has the potential to convey waste subject to NPDES Wastewater program requirements. Consistent with the Division's determination for the ready-mix concrete industry, drainage from water deliberately applied to the material storage piles as part of the process or operation is considered wastewater. Normal stormwater runoff from material piles is not considered wastewater. However, if bench mark levels are exceeded as a result of stormwater runoff from material piles, the permittee may have to implement stormwater controls to reduce the levels below the bench mark levels.

Part II, Section A: Stormwater Pollution Prevention Plan

Comment: Subsection 1(a) requires the permittee to “identify whether each receiving water is impaired (on the state’s 303(d) list of impaired waters) or is located in a watershed for which a TMDL has been established, and what the parameter(s) of concern are.” Request DWQ provide notification to those facilities that discharge to water bodies that have newly proposed TMDLs during the life of the General Permit.

*Response: See previous response on this topic above.*

Part II, Section A: Stormwater Pollution Prevention Plan

Comment: Subsection 1(e) states that “certification that the stormwater outfalls have been evaluated for the presence of non-stormwater discharges.” To fully make this determination the commenter requested that DWQ provide guidance as to whether drainage from material storage piles is considered a non-stormwater discharge. Also, please clarify what is being certified via the statement (“evaluation has been made” and/or non-stormwater discharges are present at the stormwater outfalls.”

*Response:*

*DWQ considers wastewater discharges, or circumstances where stormwater has the potential to convey waste, subject to NPDES Wastewater program requirements. Runoff from water applied to the material storage piles as part of the process or operation is considered wastewater. Normal stormwater runoff from material piles is not considered wastewater. However, if bench mark levels are exceeded as a result of stormwater runoff from material piles, the permittee would have to implement stormwater controls to reduce the levels below the bench mark levels.*

*The permittee is to certify that he has evaluated the outfalls for the presence or absence of non-stormwater discharges. The certification of the evaluation itself is all that is required by this portion of the permit text. If the permittee discovers that another discharge is present in his stormwater outfall, the permittee shall remove or permit all non-stormwater discharges.*

*DWQ has retained the language contained in the draft permit. DWQ considers the language in the draft permit text as sufficiently clear without additional modifications.*

Part II, Section B: Analytical Monitoring Requirements and Section C: Qualitative Monitoring Requirements

Comment: Draft permit requires the permittee to monitor for pH and Oil and Grease, regardless of the activities performed on-site. Requirements seem excessive. The Qualitative Monitoring includes two provisions (oil sheen and other obvious indicators) that could be used to provide sufficient determinations. Recommend qualitative monitoring in lieu of analytical monitoring for pH and Oil and Grease. Analytical monitoring for pH and Oil and Grease should be on a case by case basis and for operations with vehicle maintenance only.

*Response: Visual monitoring is intended to augment analytical monitoring by detecting gross observable materials. The cumulative effect of TSS, pH and TPH (oil and grease) at levels that degrade water quality may not always be detected visually.*

Part II, Section B: Analytical Monitoring Requirements and Section C: Qualitative Monitoring Requirements

Comment: Semi-annual analytical and qualitative monitoring is excessive and unnecessary and provides no avenue for reducing sampling burden. Recommend reduced sampling strategy with a demonstration of a well maintained water quality program. Additionally, given seasonal nature of industry a single annual sample provides sufficient information to determine the adequacy of the facility's water quality protection program.

*Response:*

*Once-per-year sampling event does not offer a sufficiently frequent evaluation to conclude that there are no stormwater pollution problems at a site. While it is true that visual monitoring is intended to augment analytical monitoring by detecting gross observable materials, the cumulative effect of TSS, pH and oil and grease at levels that degrade water quality can not be detected visually.*

*As to increased cost and providing an avenue for reducing the sampling burden, DWQ's concludes that providing an avenue for reducing the sampling burden could potentially allow an industry to sample once, or perhaps for the first two years of the permit term, and then to conduct no subsequent analytical monitoring for the remainder of the term of the permit. DWQ felt this approach was no longer acceptable in this general permit. Industrial facilities frequently change operations, change the material handling activities, expand, rotate responsible management on any particular site, and generally are not static in activity, physical configuration, personnel, or management attention to stormwater issues. We believe that a base line of twice-per-year sampling, every year, is a necessary tool to insure stormwater pollution awareness and control on most relatively clean sites. Permittees do have the option of petitioning DWQ for representative outfall status to reduce costs. Permittees also have the option to attain no exposure at the entire site and to petition DWQ for the No Exposure Exclusion from permitting. Our perspective is that the increased costs for twice-per-year sampling do not present a significant cost burden for most businesses.*

*Coverage under this General Permit is predicated on the covered sites having low probability for stormwater pollution to begin with, and that twice-per-year sampling is sufficient as a beginning sampling requirement. Note that under Tier 2 requirements, monthly sampling is required when there is evidence of greater potential for stormwater pollution. In general, DWQ's approach is to consider quarterly sampling, or monthly sampling, as a base line for facilities that we recognize as initially having a greater potential for stormwater pollution. We typically cover those facilities under an individual NPDES stormwater permit, rather than a stormwater General Permit.*

*DWQ has retained the monitoring requirements contained in the draft permit text.*

Part II, Section B: Analytical Monitoring Requirements and Section C: Qualitative Monitoring Requirements

Comment: Permittees should be allowed to utilize qualitative monitoring in lieu of analytical monitoring to determine if analytical monitoring should be taken as an initial step in the tiered response actions.

*Response: See previous response on this topic above. While it is true that visual monitoring is intended to augment analytical monitoring by detecting gross observable materials, the cumulative effect of TSS, pH and oil and grease at levels that degrade water quality can not be detected visually.*

#### Part II, Section C: Qualitative Monitoring Requirements

Comment: Qualitative monitoring requires a visual inspection, performed semi-annually, of each stormwater outfall regardless of representative outfall status. Please explain why this is required for outfalls where they have been granted representative outfall status.

*Response: When paired with an extensive qualitative monitoring, representative outfall status is intended to give relief from the added burden and expense associated with the analytical monitoring. DWQ never intended to give relief from qualitative monitoring. DWQ concludes that visual observation of outfalls is still necessary to discover problems with site stormwater management. Representative outfall status has been an option for permittees for several previous permit cycles, and it has not included relief from visual monitoring.*

*DWQ has retained the draft permit language on representative outfall status.*

#### Part II, Section B: Analytical Monitoring Requirements and Section C: Qualitative Monitoring Requirements

Comment: Recommend that If a facility implements engineered stormwater controls to a specific storm event (i.e., 5-year or 10 year storm), the design should qualify for an exemption from the monitoring requirements and/or a no discharge determination?

*Response: DWQ has considered for exemption, on a case-by-case basis, facilities that implement engineered stormwater controls where there is no discharge for storms greater than the 25-year storm. We remain open to that basis for exempting from permit requirements. Our experience is that very few facilities avail themselves of this opportunity. Further, our experience is that permittees misunderstood the past engineering requirements for a 10-year pond under previous General Permits.*

*Permittees also have the option to attain no exposure at the entire site and to petition DWQ for the No Exposure Exclusion from permitting.*

*DWQ has retained the draft permit language on monitoring requirements.*

#### Part II, Section D: On-Site Vehicle Maintenance Monitoring Requirements

Comment: Expand to include additional analytical monitoring requirements if the facility uses more than an average of 55 gallons per month and remove the burden from Section B.

*Response:*

*While it is true that visual monitoring is intended to augment analytical monitoring by detecting gross observable materials, the cumulative effect of TSS, pH and TPH at levels that degrade water quality can not be detected visually.*

*DWQ recognizes that maintaining a separate record or log of usage over 55 gallons is not necessary and burdensome. DWQ will revise the draft permit to remove specific vehicle maintenance requirements. Monitoring for TSS, pH and TPH will be required for all facilities and not limited to only those with vehicle maintenance activities.*

#### Part III, Section A: Compliance and Liability

Comment: Compliance schedule needs to allow facilities time to review the final permit, modify existing plans and programs and implement the required modifications (in lieu of effective immediately).

*Response: A time lag between the issuance of the final permit text and the revisions to SPPP is a certainty. We concur with the commenter and conclude that a reasonable time frame is within six months of the issuance of the new Certificate of Coverage. Other than for the revising of the SPPP, no persuasive argument has been advanced to suggest that there is a basis for delaying compliance with the other requirements of the permit text. DWQ concludes that compliance with all other provisions of the new General Permits is required upon the permittee's receipt of the new Certificate of Coverage. However, SPPP revisions are required within six months of the permittee's receipt of the Certificate of Coverage.*

#### Part III, Section E: Reporting Requirements

Comment: Paragraph 2 requires submittal of reports for semi-annual monitoring to DWQ CO and an additional annual report of same information to the designated regional office. Reporting appears to be redundant and overly burdensome.

*Response: Submitting reports for semi-annual monitoring to DWQ CO and an additional annual report to the designated regional office is a standard condition in all our General Permits.*

## **Summary**

DWQ has received and considered comments on the following major changes from the previous versions of the permits:

- The additional provision that some permittees may not be eligible for coverage or renewal under the General Permits if they cannot show no reasonable potential to cause or contribute to violations of water quality standards for stormwater pollution named in an established TMDL, or identified in a 303(d) listing;
- Prohibit discharges determined by the Division of Water Quality to be wastewaters;
- Required monitoring with benchmark concentrations and requirements for corrective actions in response to benchmark value exceedences; and
- An increase from once-per-year sampling and reporting to twice-per-year sampling and reporting.