North Carolina Division of Water Quality Response to Comments <u>Draft NPDES Stormwater General Permit NCG190000</u>

Background

The NPDES stormwater General Permit NCG190000 expired on August 31, 2009. The North Carolina Division of Water Quality (DWQ) announced in selected newspapers across the state on or about May 12, 2009, North Carolina Register, and on the Stormwater Permitting Unit website May 15, 2009, and in renewal letters to all affected permittees, that the draft of the new General Permit would be posted on our website for public comment. The draft permit was posted on May 20, 2009. During the public comment period, staff in the Stormwater Permitting Unit received no telephone inquiries regarding the draft General Permit. The public comment period closed on June 25, 2009. DWQ did not receive any comments during the public comment period. We did receive and consider one written letter with comments and one telephone inquiry after the stated close of the public comment period.

The stormwater General Permit regulates stormwater discharges from the following industrial activities: NCG190000 Marinas with vehicle maintenance; and ship and boat building and repairing.

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. The single commenter provided multiple comments on draft General Permit.

EPA Region IV staff in Atlanta was sent the draft General Permit on April 8, 2009, but never responded or commented. Their additional review and approval would be necessary if the proposed final form of each permit incorporated significant changes from the draft, or if significant public comments objecting to the permits were received. DWQ concludes that neither of these conditions has been established, and that further EPA review is not required.

DWQ has prepared this summary document both for those interested parties that have submitted written comments on the draft General Permits, as well as for other interested parties. We will post this document on our website for public access.

Comments and Responses

DWQ received written comments from two parties on the draft General Permit during and after the announced public comment period. We appreciate the time and effort reflected in the comments. The comments have been arranged below by topic. All comments pertaining to the revision and re-issuance of the General Permit have been incorporated 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.

1. **Discharge of boat wash water and rinse water**. Two commenters had questions and suggestions regarding the handling of boat wash water and rinse water.

Vehicle (boat) wash water and rinse water are considered wastewaters. This includes power and hand washing/rinsing. This General Permit only covers stormwater discharges, not wastewaters, which are regulated under other state programs. All wastewater discharges would need to be directed to a WWTP and/or covered under a separate wastewater discharge permit.

DWQ has retained the draft version of the language related to wash and rinse water.

2. **Other terminology for "vehicle"**. One commenter suggested replacing the word "vehicle" with "vessel" or "boat".

The word "vehicle" is used in the term "vehicle maintenance" to be consistent with the federal regulations. Vehicle includes vessels or boats, as well as other vehicles maintained on site. Additional vehicles, other than vessels or boats alone, may also be maintained at the facility and subject to the same requirements. The definition in part VI of the draft permit does state that a vessel is a type of vehicle.

DWQ has retained the draft version of the language related to vehicle maintenance.

3. **Elimination of cutoff concentrations as a trigger for reduced analytical monitoring**. One commenter suggested after three consecutive samplings below the benchmark, monitoring should cease until the last year of the permit.

DWQ concludes that schemes such as proposed here would potentially allow an industry to sample 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. Our perception is that industrial facilities may 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.

In addition, DWQ's intent in replacing the cutoff concentration with benchmark values and the response actions under Tier 1 and Tier 2 is to require that permittees take specific stormwater pollutant control actions based on the discovery of pollutant discharges in excess of benchmark values.

Further, permittees have the option of attaining a condition of no exposure to stormwater, and of petitioning DWQ for the No Exposure Exclusion from permitting requirements in order to eliminate monitoring costs. This exclusion provides that the permittee has no continuing obligation for sampling and analysis. DWQ believes that it would be beneficial for North Carolina surface waters for as many industries as possible to attain no exposure conditions, and we encourage permittees to explore this option.

DWQ has retained the draft permit requirement for twice-per-year sampling, without the cutoff concentrations option to avoid sampling obligations in subsequent sampling periods.

4. **Sampling requirements under Tier 2.** One commenter noted that the required sampling under Tier 2 is not clear.

The permit text for Tier 2 specifies that an outfall with two consecutive exceedences of the benchmark value must be sampled monthly for all parameters.

DWQ has retained the Tier 2 text specifying that all permit parameters at the outfall of concern shall be analyzed.

5. **Benchmark value for TSS.** One commenter suggested that the benchmark value for TSS is too stringent. Commenter questions the rationale for setting the stormwater discharge benchmark at 100 mg/L.

The benchmark for TSS is based on the median concentration from the NURP study. This value is also consistent with what EPA uses for TSS in stormwater. DWQ uses this same benchmark value for all general and individual permits monitoring for TSS, with the exception of wastewater discharges to HQW and ORW waters, which are typically subject to even more stringent limits (not benchmarks). If needed, there are many housekeeping measures and BMPs that can easily meet this benchmark.

DWQ has retained the previous cutoff for TSS (100 mg/L) as the new benchmark.

6. **Representative Outfall Status (ROS) requests.** One commenter suggested placing a 30 day review time limit before the request is automatically granted by default.

This process has recently been streamlined to speed up the review process. As of early 2009, all ROS requests are now handled by the appropriate Regional Office. There is no time limit established in the rules for agency response to ROS requests, nor is there any guarantee that ROS will be granted by simply applying for it. These requests are reviewed in detail as they are received, and responded to as quickly as possible. There is a ROS request form online that must be submitted to apply for ROS. http://h2o.enr.state.nc.us/su/Forms_Documents.htm#NPDESp2

Consistent with other individual and General Permits, DWQ has not made any changes in the previously applicable requirements as to site circumstances for the granting of ROS requests.

7. **Annual Summary DMR.** One commenter had questions regarding the Annual Summary DMR requirement.

There will be a form available for completing the Annual Summary DMR. This requirement is being added to all new permits, and all existing permits as they are renewed. The regular DMRs are submitted to the Central Files located in Raleigh. This new requirement makes it less difficult for ROs to get data that is important for performing compliance responsibilities.

DWQ has retained the Annual Summary DMR requirement for this permit term.

8. **Freeboard for secondary containment.** One commenter suggested adding an exemption to the freeboard requirement for containment structures not exposed to stormwater.

The secondary containment language that requires freeboard be provided for the 25-yr, 24-hr storm event is still accurate. Covered structures would just receive zero rainfall even in that storm event.

DWQ has retained the secondary containment language.

What facilities the permit applies to. Two commenters had questions or suggests about who the permit should apply to.

As per the Federal Regulations, the permit applies to only certain facilities that have an SIC code of 4493 and 373; and like activities deemed by DWQ to be similar. DWQ's strategy is to invoke the, "and like activities" provisions on a case-by-case basis for sites with the potential to contribute significant pollutants to surface waters. Blanket application of the permit to activities other than those strictly identified in the federal rules is not our current strategy in this or any other General Permit. Other facilities with other SIC codes may or may not be covered by another General or Individual Permit.

Excerpted from March 1992 NPDES Stormwater Program Q&A Document by EPA:

Facilities classified as 4493 that are <u>not</u> involved in equipment cleaning or vehicle maintenance activities (including vehicle rehabilitation, mechanical repairs, painting, and lubrication) are not intended to be covered under 40 CFR Section 122.26(b)(14)(viii) of the stormwater permit application regulations. The retail sale of fuel alone at marinas, without any other vehicle maintenance or equipment cleaning operations, is not considered to be grounds for coverage under the stormwater regulations.

Marina facilities that are "primarily engaged" in the retail sale of fuel and lubricating oils are best classified as SIC code 5541 – marine service stations – and are not covered under 40 CFR Section 122.26(b)(14)(viii) of the stormwater permit application regulations. These facilities may also sell other merchandise or perform minor repair work.

Facilities "primarily engaged" in the operation of sports and recreation services such as boat rental, canoe rental, and party fishing, are best classified under SIC code 7999 – miscellaneous recreational facilities – and are not covered under 40 CFR Section 122.26(b)(14)(viii).

DWQ has not changed what facilities may apply for coverage under this General Permit.

Summarv

DWQ's overall intent in proposing changes to the General Permit has been to provide permit requirements that will encourage industrial permittees to respond with prompt corrective action to the discovery of pollutant discharges in excess of the benchmark values. Based on the response above, DWQ has not made any changes to the draft General Permit.