



October 19, 2018

WV Department of Environmental Protection  
Division of Water and Waste Management  
601 57th Street South East  
Charleston, WV 25304

Re: WV0115924

Attn: Jon Michael Bosley

Dear Mr. Bosley,

West Virginia Rivers Coalition, on behalf of our members, respectfully submit the following comments on the re-issuance of the Construction Stormwater General Permit WV0115924 (permit).

We would like to relate our concern is about the notice, or lack thereof, for this comment period and associated public hearing. We learned about the comment period on October 17, 2018 by happenstance when it came up in conversation with the Environmental Advocate's Office and their personnel helped us track down the impending deadline. We only found the actual notice when we dug deep into the DEP's website, obscured within the stormwater permit documents webpage. It is not practical to assume that members of the general public would intuitively know to look there. The notice needs to be much more prominent to properly reach the public.

Without proper notice our members, other stakeholders, and the public at large were not afforded the opportunity to meaningfully evaluate and comment on the re-issuance and related proposed changes to this important and widely used permit. We believe the notice process was flawed in the following ways, and request DEP provide a response how these flaws will be corrected.

1. **No electronic notification.** WV Rivers is a subscriber to the DEP's electronic notification system and we cannot find any record of receiving a notice via email on or about September 3, 2018 – the date the fact sheet indicated the opening of the comment period.
2. **No record of the notice on DEP's public notice webpage.** On the homepage of DEP's website, there is a direct link to "Find a Public Notice" that takes you to a

Public Archive for DEP Public Notice. The notice for this permit re-issuance is not on that page. This would naturally be the tool the public would use to search for such a notice.

3. **No information on DEP's News Page.** The DEP encourages the public to receive information via its News feed, which is handily and clearly marked on its website homepage. There was no information about the comment period or public hearing related to this permit re-issuance on the News posts. There is a direct link on that section of the homepage that notifies the public that the permit has been extended through December 31, 2018, but again, no information about the comment period. We are familiar with DEP's customary practice of posting notices of public hearings and meetings on the news feed (such as for water quality standards, and such as for recent public meetings on air quality permits in Jefferson County). We would expect that especially for a permit that DEP has set a public hearing for as part of the comment period, that this announcement would be included as a news-worthy item on DEP's news feed.
4. **No date on the public notice.** There was no indication on the public notice of the comment period start date, or when the notice was released. We can only surmise, based upon the dates in the fact sheet, that the notice was released on September 3, 2018 which was Labor Day – a state and federal holiday. We recommend that the agency avoid whenever possible releasing public notices on state/federally-observed holidays in the interest of maximizing exposure of public notices.

We heard that no one from the public showed up for the public hearing on this permit re-issuance. This comes as no surprise considering the notice's deficiencies outlined above. We appreciate DEP's practice of hosting public hearings, but it makes no sense to set public hearings and not let the public know in as many ways as possible about the opportunity.

We find these deficiencies particularly out of sorts considering the permit's use in current high-profile industrial construction projects, such as the Rockwool facility and Corridor H. In cases like this permit, where the DEP is clearly aware of significant public interest, we urge the agency to employ all methods available to publicize opportunities for public input. We would include in those methods to make sure the Environmental Advocate is aware of public comment periods and public hearings, as

that office is often in touch with interested parties on a daily basis.

We generally applaud the efforts of the DEP to strengthen the permit requirements to avoid water quality degradation from construction. While we agree with the enhanced Best Management Practices and increased frequency of inspections, we see there are more steps that can be taken to reduce erosion and sedimentation in streams and recommend the following:

- Enhanced BMPs should also be required in karst terrain. Sediment laden water leaving the construction site is more likely to impact groundwater in karst terrain.
- The permit should include a requirement for monitoring turbidity as WV Water Quality Standards include criteria for turbidity. The permittee should be required to conduct frequent monitoring for turbidity to show compliance with the state standards.
- Permit fees should be increased. Permit fees should be increased to reflect the agency's resources needed to provide adequate enforcement of the permit, and at minimum, be raised in a manner on pace with inflation rates.
- Fines for violating the permit should be increased. The amount of the fine should be such that it deters the company from violating permit conditions.

Because we were not aware of the notice, along with the notice of the oil and gas construction general permit, until two days before the deadline we regret we are unable to provide further substantive comments at this time. We urge the agency to make immediate adjustments to its public notice process so that members of the public are more likely to receive the public notice, and would be glad to engage in further dialogue and exploration of how this can be better accomplished.

Sincerely,

A handwritten signature in blue ink, appearing to read "Angie Rosser".

Angie Rosser  
Executive Director