



September 13, 2019

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

Re: WV0115924

Attn: Sharon Mullins

Submitted electronically via dep.comments@wv.gov

Acting Director Emery:

West Virginia Rivers Coalition (WV Rivers), on behalf of our members, respectfully submit the following comments on the modifications of the Stormwater General Construction Permit WV0115924 (Permit). We oppose the modifications for reasons detailed below.

WV Rivers was omitted from the Stormwater General Construction permit re-issuance process. WV Rivers originally submitted comments on the re-issuance of the Permit on October 19, 2018. WV Rivers never received a response to our comments from DEP. Therefore, we were unaware that the permit had been finalized and were not notified of the 30-day appeal period. Also as a result of DEP's error, we were also unaware that the permit was appealed during that period and were not afforded the opportunity to evaluate whether to register as an intervener in the appeal.

In our original comments submitted 10/19/18, we detailed deficiencies in the public notification on the Permit. This additional omission of notice that supports the public's right to involvement in the process reveals a systemic flaw in DEP's public notice process and raises questions among our members of the agency's commitment to public transparency. These deficiencies must be addressed within the agency and we request a written protocol detailing DEP's public notification process and response to public comments that we can share with our members.

Compliance with Other Laws and Statutes

We adamantly oppose the added language that compliance with the terms and conditions of the permit shall be deemed as compliant with state and federal water pollution control acts and water quality standards. The Permit dangerously provides too many loopholes that could undermine compliance with all other laws protecting our water resources detailed in the following sections.

I.C Water Quality

We adamantly oppose the removal of the conditions in the Permit that requires compliance with Water Quality Standards. The implementation of Best Management Practices (BMPs) cannot be a substitution for compliance with the State's water quality standards. As we have seen on numerous occasions, the failure of BMPs often results in a violation of water quality standards.

II.A.1.b Public Notice Advertisement

We adamantly opposed the modifications which remove public notice requirements for certain projects. The modifications exempt projects lasting over a year and impacting Tier 3 streams from public notice requirements. These changes are unacceptable. The public has a right to know of construction projects impacting the community for longer than a year or impacting outstanding water resources.

II.A.1.c

We oppose the omission of requirements for projects impacting Tier 3 streams. The revised permit includes requirements for large projects, projects disturbing 1-3 acres, and projects that will be completed in more or less than 1 year. However, there are no specific requirements for projects that impact Tier 3 streams. We request projects impacting Tier 3 streams have the same requirements as a large construction project, including public notice requirements.

II.H.1.a Maps

We object to the removal of the requirement for the Limit of Disturbance (LOD) to be included on the project maps. The LOD is a critical component to understanding the impacts of the proposed project. The LOD should always be a required component on project maps.

II.H.1.c Peak Discharge

We oppose the modification to remove peak discharge calculations for pre- and post-construction from the permit requirements. Frequency and intensity of storms are predicted to increase in the coming years. Calculations ensuring that stormwater BMPs are adequately sized to control runoff from large storm events are essential. We request this component be restored in the Permit requirements.

II.H.1.c.3 Access Roads

We are concerned with the modification that excludes access roads from the Permit requirements. An existing, unimproved road may not be able to withstand increased construction traffic. Even though it is an existing road, it may need BMPs to ensure there are no water quality impacts from increased construction practices. We request a provision in the Permit that gives the Director the discretion to include access roads within the Permit requirements.

II.H.3.b.2 Use of Best Management Practices Required

We object to the proposed modifications that reduce the use of enhanced BMPs. The DEP argued in their January 10, 2019 response to comments that “enhanced BMPs will allow DEP to meet its anti-degradation requirements for Tier 2 and Tier 3 waters...No other approach is reasonable.” Tier 2 waters were originally subject to enhanced BMPs. In the revised permit, Tier 2 waters are left out of the definition of special waters; nor are they protected by TMDLs. Therefore, Tier 2 streams are afforded no enhanced BMPs in the revised permit, **which according to DEP’s own rationale**, does not meet anti-degradation requirements of the Clean Water Act.

III.A. Comply with Approved Registration

We object to the modification that reduces the frequency of inspections. The frequency of inspections was increased in the 2018 permit re-issuance to more closely align with EPA rules. The more frequent inspections were used to meet anti-degradation requirements. Removing the increased frequency of inspections in the 2019 revised permit negates the argument that anti-degradation reviews are not necessary. The inspection frequency no longer meets EPA requirements and thus does not comply with National Pollutant Discharge Elimination System and Anti-degradation requirements under The Clean Water Act.

II.I. Groundwater Protection Plan

We oppose the modification that allows an incomplete GPP to be submitted. The

applicant must submit a complete GPP. The GPP can always be modified at a later date if the information within the GPP changes. We request DEP to require a complete GPP within the NOI and application that can be modified if necessary. DEP cannot fully assess the potential impacts of the project without a complete GPP.

III.B.2.g Requirement to Correct Deficiencies

We object to the added language that allows permittees to correct deficiencies “as soon as practical”. The addition of this phrase creates too much leeway in the regulations to ensure protections for our rivers and streams. The majority of water quality violations from construction projects are a result of erosion and sediment controls not being properly maintained. The increased inspections are intended to rectify this issue. Allowing companies to let deficient erosion control measures sit for over a week leaves our waters vulnerable to increased sedimentation. An explanation of the delay on an inspection report does not protect water from sediment pollution.

Appendix A. Standard Conditions

13. Permit Modifications

We adamantly oppose any changes that restrict public notice on permit modifications. If significant modifications are proposed for a permit, the public deserved the right to comment on the proposed modifications. We request DEP restore the public notice requirements in the permit modification conditions.

16. Liabilities

We oppose the modifications that reduce penalties for violations. This change is a step in the wrong direction. We should be increasing fines to deter future violations, not decreasing penalties that weaken incentives for compliance.

Appendix C. Definitions

46. Special Waters

There are no requirements for enhanced BMPs for surface waters that serve as a drinking water source. We request DEP include Source Water Protection Areas in the definition of Special Waters.

In summary, WV Rivers is strongly opposed to the revised General Construction Stormwater permit. We are deeply concerned about the consequences for West Virginia’s rivers and streams would face from these proposed modifications. DEP’s

2018 re-issuance of this permit made some necessary strengthening of requirements and better aligned WV regulations with federal standards. DEP provided a very detailed and thorough rationale for why those changes were necessary in January 2019. We are troubled by the agency's change in course. These proposed revisions only bow to industry's objections and fail to adequately protect the state's water resources from construction runoff.

Thank you for your consideration of these comments. We look forward to receiving notice of your response.

Signed,

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

Angie Rosser, Executive Director
West Virginia Rivers Coalition