

New Jersey Department of Environmental Protection  
Division of Water Quality  
Bureau of Nonpoint Pollution Control

**RESPONSE TO COMMENTS**

Comments were received on the draft NJPDES Stormwater Construction General Permit No. NJ0088323. The thirty (30) day public comment period began on December 7, 2016 when the Public Notice was published in the Star Ledger, Courier Post or the New Jersey Herald as well as the NJDEP Bulletin. It ended on January 6, 2017. The following person[s] commented during the public comment period:

1. Elizabeth George-Cheniara, Esq., Director of Environmental Affairs for The New Jersey Builder Association in a letter dated December 15, 2016 and subsequent letter dated January 5, 2017.
2. Tony DiLodovico, President, Tony D Environmental Permitting, LLC in an email dated January 5, 2017.
3. Frank Minch, Coordinator, Soil and Water Resources – NJ Department of Agriculture in an email sent January 5, 2017.

A summary of the timely and significant comments received, the New Jersey Department of Environmental Protection's (Department) responses to these comments, and an explanation of any changes from the draft action have been included below:

1. COMMENT:

NJBA views that the proposed renewal of the Construction GP entails primarily minor amendments and that some proposed amendments are needed to ensure consistency with the federal NJPDES rules. However, NJBA strongly recommends that the Department modify its current approach where the permit requirements are “buried” within the permit, particularly as non-compliance could lead to penalties for violation of permit conditions. In order to facilitate greater awareness and fuller compliance with the extensive permit requirements, permittees should instead be provided with a copy of requirements, either attached to the Authorization to Discharge or with a link that lists these requirements.

RESPONSE:

The Stormwater Construction General Permit (the permit) electronic application system requires the applicant to certify that he/she has read and understands all the requirements of the permit. A link to the permit language is also provided. In addition, the Department provides a guidance document for the permit on its website and an onsite tip card created by the Department was provided to all Soil Conservation Districts for distribution. The Department recognizes that a greater awareness of permit conditions will only help to improve permit compliance. The Department will explore the option of a simplified guidance sheet to be made available on our website. No change to the permit was made based on this comment.

2. COMMENT:

“...While the permit does not specifically address dust control requirements in the “Waste Handling” section (Part I J.3.), the Department could address the issue by including the same requirements as outlined for single family home construction projects.”

RESPONSE:

The Department disagrees with the comment. The permit requires a certified Soil Erosion and Sediment Control Plan as part of the stormwater pollution prevention plan. Dust control is required to be addressed as part of the project's soil erosion and sediment control plan. These requirements are found in "The Standards for Soil Erosion and Sediment Control in New Jersey – Engineering Standards 16-1". No change to the permit was made based on this comment.

3. COMMENT:

With regard to Part 1, Section J.3.a – Waste Handling, the draft permit includes a requirement to use covers on waste containers. While the Fact Sheet refers to using covers as an example only, the draft permit instead makes use of covers as a requirement by the term "i.e." in its language, as highlighted below:

- Fact Sheet: "The Waste Handling component of the SPPP has been updated to include covers as an example of an appropriate means of preventing waste materials from overflowing, leaking, or blowing out of the containers."
- Draft Permit, Part 1, Section J.3.a – Waste Handling: "Waste shall be collected from such containers before they overflow, and spills at such containers shall be cleaned up immediately. Staged waste containers shall be maintained so as to prevent waste materials from overflowing, leaking, or blowing out of the container, i.e. covers. Spills, leaks, and overflows, which do occur, shall be cleaned up immediately."

It is important that the Department clarify upfront its intent and whether in fact covers are being required on waste containers. Our members view such a requirement to be (1) impractical on sites, (2) too prescriptive, and (3) placing permittees at risk for significant penalties. Further, the requirement to use covers on waste container should be removed from the Draft General Permit for several other reasons, as outlined below.

The 2009 General Permit included a requirement to use covers on waste containers which was removed upon renewal of the General Permit in 2012 because, as stated in the fact sheet for the 2012 Draft Renewal of Permit No. NJG0088323, "The Department has determined that this requirement is too prescriptive and is not practical at all project sites where containers must remain open for access to conduct daily operations."

- The current (2012) federal Construction General Permit does not include a requirement for covers on waste containers. While the draft federal construction permit does include a requirement for covers on waste containers, it has been extensively commented on by industry that it should be removed from the draft federal permit.
- The draft federal Construction General Permit has not been finalized or adopted and subsequently should not be relied upon to develop a requirement to cover waste containers. Moreover, New Jersey's regulations should not be more stringent than the federal government, which is an approach taken in other regulatory frameworks.
- This requirement will be difficult and costly to implement and maintain during extreme weather conditions.

- Most dumpsters are not watertight and have weep holes to drain snowmelt and rainwater. Using tarps to cover dumpsters will not likely be able to control leaks.

It is suggested that the language remain the same as what is current 2012 General Permit. The current language states:

“Construction sites shall have one or more designated waste collections areas onsite or adjacent to the site, and an adequate number of containers for waste. Staged waste containers shall be maintained so as to prevent waste materials from overflowing, leaking, or blowing out of the container. Spills, leaks, and overflows, which do occur, shall be cleaned up immediately.”

As an alternative to requiring covers, the draft General Permit should allow the permittee to determine the best management practices to meet the obligations under the permit. While permit compliance should be left to the permittee, the fact sheet could recommend or suggest other best management practices for controlling pollutants from waste containers such as placing the dumpsters behind curbs on pervious surfaces unless infeasible, servicing dumpsters prior to overflowing, loading heavier construction waste materials on top of lighter materials, controlling the debris/waste materials that are disposed of in the dumpsters to not include hazardous or regulated wastes or other pollutants that would be harmful to the environment, and, policing the area to pick up any material displaced from the containers on a regular basis.

RESPONSE:

The Department agrees with the comment. The abbreviation “i.e.” was used incorrectly and shall be replaced with “e.g.” to signify that the use of covers was an example to meet the requirement and not a requirement itself. Part I, Section J.3.a. has been modified accordingly.

4. COMMENT:

With regard to Part 1, Section A.2.b.iv of the draft permit, the language notes

“Stormwater discharges that occur after the construction activities under 2.a.i, above, have been completed (see E.5 below). If the facility being constructed is in one or more of the categories identified in subparagraphs 1i through 1ix or subparagraph 1xi of the definition in N.J.A.C. 7:14A-1.2 of "stormwater discharge associated with industrial activity," then authorization for that stormwater discharge must be obtained under another NJPDES permit (such as NJPDES Permit No. NJ0088315, where applicable), even if authorization for the stormwater discharge from the construction activity has been obtained under this permit.)

The reference to “E.5” appears to be incorrect. Section E.5 includes requirements for weekly and extended BMP inspections. Section E.7 of the Draft Renewal is for the Notification of Completion. The reference to “E.5” should be changed to “E.7.”

RESPONSE:

The Department agrees with the comment. The referenced section shall be corrected in the final permit as detailed in the comment.

5. COMMENT:

Under Part 1, Section F.2.a, General Conditions, the outline format used for this Part 1, Section “F” should be revised. Section F.2.a should be titled “General Conditions” and each item listed under

“General Conditions” should be a subsection using a roman numeral. See outline format used in part 1, Section “F” of the current General Permit. The outline for items listed Part 1, Sections F.3, F.4, F.5 and F.6 also need to be similarly reformatted.

RESPONSE:

The Department agrees with the comment. Section F shall be reformatted in the final permit.

6. COMMENT:

Under Part 1, Section C.1.b, Authorization - New Authorizations, this section of the general permit uses the term "Pinelands Commission" without specifically referring to the "Executive Director" as follows:

For new stormwater discharges commencing in the Pinelands Area (as defined by N.J.S.A. 13:18A-11) after November 2, 1992, authorization under this permit becomes effective only if, pursuant to N.J.S.A. 13:18A-15, the Pinelands Commission has determined that:

- i. The Pinelands Commission will not review the facility based upon the issuance of a certification of the facility's soil erosion and sediment control plan issued by the Soil Conservation District or the State Soil Conservation Committee, or the approval of the facility's soil erosion and sediment control requirements issued by the municipality (whichever is applicable);
- ii. The Pinelands Commission has reviewed and approved the facility following, if applicable, issuance of a certification of the facility's soil erosion and sediment control plan issued by the Soil Conservation District or the State Soil Conservation Committee, or the approval of the facility's soil erosion and sediment control requirements issued by the municipality (whichever is applicable); or
- iii. The Pinelands Commission has, pursuant to N.J.A.C. 7:50-4.51 et seq., reviewed and approved the development application of the Department of Transportation (DOT).

A recent Court decision involving approval of the construction of a natural gas line through the Pinelands Area has caused confusion within the regulated community as to when the entire Pinelands Commission has to formally approve a State Agency Action as opposed to the Executive Director approving said Action. To avoid any confusion, the words "the Executive Director of" should be inserted before the term "The Pinelands Commission" in Part 1, Section C.1.b. i,ii and iii of the general permit.

RESPONSE:

The Department disagrees with the need for such a change in the permit at this time. The referenced rule, N.J.S.A. 13:18A-15, specifies that the “Pinelands Commission’s” approval is required. The permit requirement simply reflects the provisions of the rule. No change to the permit was made based on this comment.

7. COMMENT:

The citations (in the Contents of the Administrative Record section of the fact sheet) need some date adjustments. #18 - the Standards under the 2:90 rules should be July 2011 and #19 - the Policies and Procedures Manual was revised December 2015.

RESPONSE:

The Department agrees with the comment. The citations shall be corrected in the final permit to reflect the most current version of the referenced documents.