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LEONARD K. PETERS
SECRETARY

November 21, 2014

Mr. Chris Thomas, Chief
Sustainable Communities and Watersheds Branch
Water Protection Division
US EPA, Region 4
61 Forsyth Street, SW
Atlanta, GA 30303

Re: Response to Public Comments
KPDES No.: KYR100000
AI No.: 35050

Dear Commenter:

Your comments concerning the above-referenced draft permit have been reviewed and responses prepared in accordance with Kentucky Pollutant Discharge Elimination System (KPDES) regulation 401 KAR 5:075, Section 12. The comments have been briefly described below and our responses to those comments follow:

- COMMENT 1:** EPA commented that for the most part the draft permit effectively contained the non-numeric federal effluent requirements (Construction and Development Point Source Category at 40 CFR 450). However, EPA did ask that DOW include or address the following items in the final Permit:
- COMMENT 1a:** Erosion and Sediment Controls: To minimize sediment discharges from a site, the permit should require that the design, installation, and maintenance of erosion and sediment controls must address factors such as the amount, frequency, intensity and duration of precipitation, the nature of resulting stormwater runoff, and soil characteristics, including the range of soil particle sizes expected to be present on the site.
- RESPONSE 1a:** This comment is consistent with 40 CFR 450.21(a)(5). Although DOW believes that the draft permit addressed these requirements, the following statement has been added to Section 2.1.4 item 1 of the final Permit:
- “The design installation, and maintenance of erosion and sediment controls must address factors such as the amount, frequency, intensity and duration of precipitation, the nature of resulting stormwater runoff, and soil characteristics, including the range of soil particle sizes expected to be present on site.”*
- COMMENT 1b:** Erosion and Sediment Controls: The permit specifies a 25-ft buffer zone for waters designated as High Quality or Impaired (for non-construction related impairments), or a 50-ft buffer zone for waters designated as Coldwater Aquatic Habitat or Outstanding State Resource Water (OSRW),

Outstanding National Resource Water (ONRW) or Exceptional Water, or sediment impaired without a TMDL. For all other waters, the permit should require the permittee to provide and maintain natural buffers around surface waters, direct stormwater to vegetated areas to increase sediment removal, and maximize stormwater infiltration, unless otherwise infeasible.

RESPONSE 1b: This comment is consistent with 40 CFR 450.21(a)(6). As written, the draft Permit required buffer zones for all antidegradation categories and use designations eligible for coverage. DOW believes this addressed the intent of this regulation. To avoid confusion, the following statement has been added to Section 2.4 of the final Permit and Section 3.4 of the Final Fact Sheet:

“Unless infeasible, natural buffers should be provided and maintained around receiving waters, stormwater should be directed to vegetated areas, and infiltration of stormwater should be maximized to reduce pollutant discharges.”

To provide additional clarification, the following definition of “infeasible” was added to Section 7.2 of the final Fact Sheet:

“Infeasible means not technologically possible, or not economically practicable and achievable in light of best industry practices. (40 CFR 450.11(b))”

COMMENT 1c: Erosion and Sediment Controls: The permit needs to include a requirement to minimize soil compaction and, unless infeasible, preserve topsoil.

RESPONSE 1c: This comment is consistent with 40 CFR 450.21(a)(7) and (8). DOW believes that the draft Permit addressed the intent of this regulation. To avoid confusion DOW included the following statement in Section 2.1 of the final Permit:

“Permittees are to minimize soil compaction and, unless infeasible, preserve topsoil except in specific site areas where the intended function dictates compaction or removal/disturbance of topsoil.”

COMMENT 1d: Dewatering: Under the construction and development rule, permittees are required to minimize the discharge of pollutants from dewatering trenches and excavations. The permit should include an explicit statement that these types of discharges are prohibited unless managed by appropriate controls.

RESPONSE 1d: This comment is consistent with 40 CFR 450.21(c). Although DOW believes that the draft Permit addressed this requirement, clarification has been added to the existing dewatering requirements in Section 2.1.6 item 10 of the final Permit:

Construction dewatering *“(including discharges from dewatering of trenches and excavations) provided it is managed by appropriate controls and”* the requirements of this permit are met.

COMMENT 1e: Pollution Prevention Measures: Under Section 2.1.4 item 5.b (Other Construction and Development Site Management Practices), please add that the permittee must minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters. Wash waters must be treated in a sediment basin or alternative control that provides equivalent or better treatment prior discharge.

RESPONSE 1e: This suggestion, consistent with 40 CFR 450.21(d)(1), was not included as stated in the draft Permit. By not prohibiting the discharge of wash waters in the draft Permit, one could conclude that in order to discharge these wastestreams all conditions of the permit must be met thereby meeting the intent of this requirement.

To provide clarification, DOW added the following statement to Section 2.1.4 item 5.b of the final Permit:

“Minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters. Wash waters must be treated in a sediment basin or alternative control that provides equivalent or better treatment prior to discharge.”

COMMENT 1f: Pollution Prevention Measures: The Permit requires the prompt cleanup of spills of liquids and solid materials that could pose a pollutant risk (Section 2.1.4 item 5.b.vii of the draft Permit). DOW should expand on this condition to further require that the permittee implement chemical spill and leak prevention and response procedures

RESPONSE 1f: This comment is consistent with 40 CFR 450.21(d)(3). Section 2.1.4 item 5.b.viii has been updated to include the suggested expanded language:

Prompt cleanup of spills of liquids and solid materials that could pose a pollutant risk *“and implement a chemical spill and leak prevention and response procedure.”*

COMMENT 1g: Prohibited Discharges: The following discharges are prohibited: Wastewater from washout of concrete, unless managed by an appropriate control; Wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds and other construction materials; Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance; and Soaps or solvents used in vehicle and equipment washing.

RESPONSE 1g: This comment is consistent with 40 CFR 450.21(e). Although DOW believes that the draft Permit addressed this requirement, clarification has been added to the existing SWPPP requirements in Section 2.1.4 item 5 of the final Permit:

“Wastewater from washout of concrete is prohibited, unless managed by an appropriate control...”

“Wastewater from washout and cleanout of stucco, paint, form release oils, and curing compounds are prohibited”

“Discharges of fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance are prohibited”

“Soaps or solvents used in vehicle washing are prohibited”

COMMENT 1h: Surface Outlet: Please add in the permit that, when discharging from basins and impoundments, permittees are required to utilize outlet structures that withdraw water from the surface, unless infeasible.

RESPONSE 1h: This comment is consistent with 40 CFR 450.21(f). Section 2.1.4 item 4.e has been updated to include this requirement:

“...unless infeasible, discharges from basins and impoundments must utilize outlet structures that withdraw water from the surface...”

COMMENT 1i: Under Section 2.1.4.2., KDOW should consider adding a timeframe to the following requirement: “It is imperative that stabilization be employed as soon as practicable, but no less than (timeframe, such as 24 hours), in critical areas.”

RESPONSE 1i: A reference to the existing requirement stabilization timeframes in Section 2.3 was added to Section 2.1.4 item 2 for clarification.

COMMENT 1j: Section 3.4 (Buffer Zone) of the draft Fact Sheet (second paragraph) says that discharges to High Quality Waters or Impaired Waters are required to maintain at a minimum a 25-foot buffer zone. In the following paragraph it says that discharges to OSRWs, Exceptional waters and impaired waters (as well as cold water habitat waters and ONRWs) are required to maintain at a minimum a 50-foot buffer zone. Since OSRWs can be High Quality waters or Exceptional waters, both the 25 and 50-ft buffer zones would apply. Please clarify exactly which buffer zone applies to OSRWs.

RESPONSE 1j: The second paragraph of Section 3.4 of the final Fact Sheet has been modified to read “*High Quality Waters (except OSRWs).*”

COMMENT 1k: The permittee should be required to document how it will comply with stabilization requirements set forth under the stabilization conditions in Section 2.3. of the permit. This could be done by including under the SWPPP conditions in Section 2.1.4. a requirement to describe the procedures or how final stabilization (according to the terms of the permit) will be achieved

RESPONSE 1k: A reference to the stabilization requirements in Section 2.3 of the final Permit was included in Section 2.1.4 item 8.

COMMENT 2: The Homebuilders Association of Kentucky (HBA) and Smith Management Group (SMG) requested that DOW determine whether an operator requires an individual permit within 7 days of receipt of the NOI-SWCA and provide an explicit list of facts that it considers in determining if an Individual Permit is needed. They also requested that a final decision be received within 7 days of submittal of the NOI-SWCA. If project authorization is not received within 7 days, the request is that the project be authorized to proceed under general permit coverage as long as the applicant maintain and use conditions included in their SWPPP.

RESPONSE 2: DOW is cognizant of the time sensitive nature of the projects seeking authorization under this general permit and steps have been taken to address this. For instance, the development of an electronic application process has resulted in an average response time of 3 days over the past few years.

However, DOW must have sufficient time to review each NOI-SWCA for completeness and determine eligibility. Coverages will not be automatically granted in the event that DOW does not issue the appropriate notification within the requested timeframe.

When coverage is denied the operator will receive a letter from DOW indicating why coverage was denied and instructions to apply for an individual permit.

COMMENT 3: HBA and SMG asked that clarification be provided for “Coverage Extension”. Coverage Extension should be considered as a notification to the Division of Water that the permittee will continue the existing operation that is covered by the original NOI. If the Coverage Extension will require a public notice opportunity or if it will allow comments to be made on a permit that has already been approved, then this provision should be removed from the draft permit.

RESPONSE 3: There has never been, nor is DOW proposing, a public comment period prior to issuing coverages under this general permit. Coverage Extensions will apply only to ongoing projects (as described in Section 5.3.2) that wish to extend coverage under the new KYR10 beyond 1 year from the effective date and are not proposing to change the scope of work that was originally proposed. DOW will require and review NOI-SWCAs for project wishing to change the scope of work

COMMENT 4: HBA and SMG suggested that the definition for “regularly” (Section 2.1.7 of the Permit) be revised to mean once every 14 days or within 24 hours after any storm event of 0.5” or greater.

RESPONSE 4: As written “regularly” is defined as at least every 7 calendar days or at least every 14 calendar days and within 24 hours of any storm event of 0.5 inches or greater. The suggested language calls for fewer inspections than is currently required. The definition will remain unchanged.

COMMENT 5: The Kentucky Stormwater Association (KSA) commented that the inclusion of a new undefined “non-numeric effluent limitations” adds confusion and complexity. This will be a confusing point for our local government inspectors and the site operators.

RESPONSE 5: DOW recognizes that referring to stormwater controls and practices as “limitations” may be confusing. All such references will be changed to non-numeric effluent requirements.

COMMENT 6: Multiple comments were received expressing concern or confusion about individual lots within a subdivision/common plan of development.

Ex1: subdivisions have on average around 200 plots/houses. Each plot is usually less than an acre and not all the plots are bought and sold at the same time. You could be looking at 1 subdivision, 3 developers with around 75 permits each.

Ex2: Does this mean that an individual home building lot within a permitted subdivision would be required to obtain it’s own KYR10 coverage once the entire common plan of development (the subdivision) is developed by the original operator and the individual lots (less than an acre, part of the common plan of development) are sold to a new operator(s)?

RESPONSE 6: There are several scenarios outlined in Section 7.3 of the final Fact Sheet that help address this issue. However, there are too many variations to list how every instance would be handled. The way the regulations are written, coverage under this general permit must be maintained until either final stabilization is achieved on all plots or (in the case of a subdivision) the homebuilder establishes temporary stabilization for individual lots for which they are the operator. Additionally, a developer may choose to submit one NOI-SWCA for all activities for which they are considered the operator within a larger common plan of development (i.e. a homebuilder with multiple, non-contiguous lots throughout the development).

COMMENT 7: Due to the move toward more general permits and less individual permits in areas with special waters (CAH, OSRW, ONRW, EW, and some IW), KSA requests clarification be provided regarding the additional requirements for these receiving streams. Local government plan reviewers may be in a tough position of having to review plans to a more difficult standard.

RESPONSE 7: In order to clarify this issue, DOW will indicate on coverage letters if additional requirements apply to a site.

Any person aggrieved by the issuance of a permit final decision may demand a hearing pursuant to KRS 224.10-420(2) within thirty (30) days from the date of the issuance of this letter. Any demand for a hearing on the permit shall be filed in accordance with the procedures specified in KRS 224.10-420, 224.10-440, 224.10-470, and the regulations promulgated thereto. The request for hearing should be submitted in writing to the Energy and Environment Cabinet, Office of Administrative Hearings, 35-36 Fountain Place, Frankfort, Kentucky 40601 and the Commonwealth of Kentucky, Energy and Environment Cabinet, Division of Water, 200 Fair Oaks Lane, Frankfort, Kentucky 40601. For your record keeping purposes, it is recommended that these requests be sent by certified mail. The written request must conform to the appropriate statutes referenced above.

If you have any questions regarding these responses, please contact the Surface Water Permits Branch, at (502) 564-3410 or by email at SWPBSupport@ky.gov.

Further information on procedures and legal matters pertaining to the hearing request may be obtained by contacting the Office of Administrative Hearings at (502) 564-7312.

Sincerely,

A handwritten signature in black ink, appearing to read 'P. T. Goodmann', with a long horizontal flourish extending to the right.

Peter T. Goodmann, Director
Division of Water