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 Permit No. NJ0088323 issued on February 1, 2012. The thirty (30) day public comment period began on December 21, 2011 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 20, 2012. 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 January 23, 2012

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:
   A. Authorization Under This Permit
   A.3 currently states: "Other discharges are not authorized by this permit, even if such discharges are combined with stormwater discharges that are authorized by the permit."

   A prohibition of non-stormwater discharges is unrealistic and cost prohibitive. The Department should recognize that the potential for non-stormwater discharges exists at construction sites and that appropriate Best Management Practices can be installed to reduce or eliminate the potential fro pollutants contained in the non-stormwater discharges that are discharged to a sediment basin and ultimately off site. Common "everyday" construction practices, such as sod/lawn irrigation, sprinkling water for dust control, adding water to soils to achieve compaction and the flushing of water lines, to name a few, are not only inevitable during the course of construction, but are indeed necessary. By prohibiting non-stormwater discharges, it appears that the Department is suggesting that the permittee capture the water, store it, characterize it and then ultimately truck it away and dispose of it at some type of disposal facility. If this is the case, then an undue cost burden would be imposed on the regulated community and the costs associated with non-stormwater discharges would likely exceed any environmental benefit.

   It is also important to recognize that if non-stormwater discharges are prohibited, then these discharges could be considered violations of the permit conditions. Any occurrence of these types of discharges is technically an "Incidence of Non Compliance" and needs to be reported to the Department under Part 1E.4.a.

   Additionally, other New Jersey General Permits, such as the MS4 Tier A permit, allow non-stormwater discharges and include actions to be taken if any of the discharges are a significant contributor of pollutants to or from the MS4.

   The permit should be modified to allow, at a minimum, the Allowable Non-Stormwater Discharges included in Part1.3B of the Federal GP. The Department should allow non-stormwater discharges as an authorized discharge and could further require the approved erosion and sediment control plan or

other document, such as the waste control component, include the Best Management Practices to be implemented at the site to reduce or eliminate the potential pollutants that may be contained in those discharges.
RESPONSE:

The Department does not agree with this comment. The permit language referenced is not prohibitive of any activity, but rather states that such activities are not authorized by the Stormwater construction General Permit (5G3). The non-stormwater discharges may not require authorization or may be authorized under other Department permits and regulations such as the Construction Dewatering Permit (B7-NJ0134511), Hydrostatic Test Water Permit (NJ0132993), or ground water discharge permits by rule. Additionally, dust control is authorized by reference in a certified soil erosion and sediment control plan. To maintain and authorize an exhaustive selection of every possible non-stormwater discharge that could occur at a construction site under the 5G3 permit is not a practical consideration at this time and is beyond the intended scope of the permit.

2. COMMENT:
D. Request for Authorization Requirements
D.2 currently states: "The Department may, at its discretion, accept an RFA submitted after the foregoing deadlines; however, the discharger may still be liable for any violations that occurred prior to the submission of the RFA."

The words "at its discretion" are overreaching and should be removed from this section. This statement as written would allow the Department to essentially stop a construction project from moving forward if the operator failed to file a RFA for whatever reason and then subsequently filed the RFA to get into compliance. There is no argument that the filing a RFA in a timely manner is a permit requirement and if not filed in accordance with the permit requirements, it could be cause for the Department to initiate an enforcement action. By simply removing "at its discretion" from this text the Department reserves the right to initiate an enforcement action for any un-permitted discharges that occur between the commencement of construction and issuance of an authorization to discharge.

Additionally, even if "at its discretion" is removed from the text, the provision would still be consistent with Section 2.4 (D) of the federal permit (below) in which the agency reserves the right to take enforcement action for un-permitted discharges.:

> "D.Late Notifications: Operators are not prohibited from submitting NOIs after initiating clearing, grading, excavation activities, or other construction activities. When a late NOI is submitted, authorization for discharges occurs consistent with Part 2.3. The Agency reserves the right to take enforcement action for any un-permitted discharges that occur between the commencement of construction and discharge authorization."

RESPONSE:

The Department agrees with the comment and will adjust the permit language accordingly.

3. COMMENT:
E. Effluent Limitations, Inspections and Reporting Requirements

E.1a i and ii refer to the "erosion and sediment control component" and the "soil erosion and sediment control plan certified pursuant to N.J.S.A. 4:24-43." Similarly, section 1b refers to the "soil erosion and sediment control plans."

The NJBA has an overall concern that this section of the permit should be clarified to state that the referenced standards are in fact the existing "Standards for Soil Erosion and Sediment Control" administered by the Department of Agriculture. The NJBA also notes that the "Standards for Soil Erosion and Sediment Control" will be amended in the near future. Therefore, it is important that the programs are well coordinated and the requirements consistent.

RESPONSE:

The Department agrees with the comment and will adjust the permit language accordingly by removing the text contained in Part I E. 1 b. and replacing it with specific reference to the "Standards for Soil Erosion and Sediment Control in New Jersey". The Department will work with the Department of Agriculture through the State Soil Conservation Committee to ensure that those standards are amended to meet the minimum federal requirements at: 40 CFR 450.21

4. COMMENT:
Item 3 "Routine Inspections" requires that the permittee conduct "routine" inspections. The term "routine" is too vague as a timeframe and therefore NJBA recommends a more defined standard of "weekly" inspections. See E3a, page 6. Further, the NJBA greatly believes that by requiring weekly inspections it would obviate the need for inspections after storm events, which is a requirement that the Department was contemplating. Inspections on a weekly basis are sufficient to ensure that the site is being adequately and consistently monitored.

Item 3 also states "(Routine inspections minimum weekly.)" The NJBA does not believe that this language is necessary, assuming that the Department specify, as recommended above, that weekly inspections are required.

The NJBA strongly recommends that the Department should adopt guidelines and a standardized format (checklists) outlining what should be routinely inspected and evaluated by the permittee. This would ensure inspections are conducted, documented and evaluated properly and in a consistent fashion.

RESPONSE:

The Department agrees with the comment and will adjust the permit language accordingly. In addition, the Department will make available a draft guidance document on its website with this final permit that contains inspection checklists and other information pertaining to the permit for review and comment.

5. COMMENT:
Item 3a.i. states: "In the event that the industrial activities onsite are ceased for a period of six (6) months or greater, the permittee may seek a suspension of the routine inspection requirement of the permit with the written approval of the soil conservation district office overseeing the project on a form provided by the Department."

The NJBA believes the Department should revise the language in section E3ai to include not only "industrial activities" but also "small construction activities".

The section also applies to activities that are "ceased for a period of six (6) months or greater". The section should be revised to include instances when it may be anticipated that the construction activities at the site would be discontinued.

Further, the NJBA supports this provision and would like to add and additional "standard" provision that allows for portions of projects that have not been disturbed or that have been stabilized in accordance with the Standards for Soil Erosion and Sediment Control in New Jersey or the approved erosion and sediment control plan to be inspected every 30 days, rather than on a weekly basis. There is a cost associated with inspecting stabilized areas and natural areas within the boundaries of a construction site that can be reduced by not spending time on inspections of areas when it is not needed. Areas in their natural state and stabilized areas are inactive areas that have low potential for the discharge of pollutants. Requiring weekly inspections for these types of areas is not needed as the potential for the discharge of pollutants is greatly reduced or eliminated.

RESPONSE:

The Department agrees with the comment and will adjust the permit language accordingly by clarifying that weekly inspections need only be performed in areas where there is industrial activity or small construction activity. Weekly inspections in disturbed stabilized areas identified on a certified soil erosion and sediment control plan may be suspended or performed less frequently with the approval of the Soil Conservation District.

6. COMMENT:
Item 5 "Notification of Completion" states: "The Soil Conservation District will provide the Department notification that a copy of the report of compliance was issued under N.J.A.C. 2:90-1 for completed construction activities, except single family home construction under b. below."

The report of compliance noted in the provision above effectively conveys the notice termination of the permit coverage to the Department. However, the permit does not include any reliable defensible mechanism to notify the permittee that their permit coverage has officially been terminated. Therefore, the permittee would not know when their responsibility for permit compliance is terminated, unless the permittee has some type of written verifiable documentation that terminates the permit coverage as of a certain date.

Permittees are required to comply with permit conditions until the permit coverage has been terminated and should be able to document in writing when the permit coverage has been terminated. Most state permits, including also the federal permit, have a process for filing a Notice of Termination and a means to verify that permit coverage has been terminated. The New Jersey permit also should contain a process or means to verify and document the termination of permit coverage.

RESPONSE:

The Department agrees with the comment and will pursue viable options for notifying permittees of permit terminations.

At present premittees can access the Departments Data Miner online database search to find permit status updates. Furthermore, permittees can contact the Department's Bureau of Nonpoint Pollution Control to obtain a permit termination letter until a formal procedure is established.

7. COMMENT:
Item 6 "Reopener" essentially refers to the anticipated regulatory action by the United States Environmental Protection Agency that would adopt numeric effluent limitation guidelines (ELGs) for construction sites. The NJBA strongly encourages that this provision should not be adopted and should be deleted from the permit as it is beyond what is required by the federally delegated stormwater program here is New Jersey. Furthermore, it is unlikely that the USEPA would be able to adopt these ELGs in the near future, given legal circumstances that have arisen due to the USEPA's proposed ELGs.

RESPONSE:

The Department agrees with the comment and has determined that the language in E.6. is not necessary in the permit. The Department has regulatory authority to modify the permit at any time in accordance with the NJPDES regulations at N.J.A.C 7:14A -16.

8. COMMENT:
Attachment A: RFA Certification
The NJBA has heard of significant concern regarding the legal obligations and potential civil and criminal penalties of the "duly authorized representatives", as provided in section 2 designating this representative. In part, this concern may be due to the references to both the "Request for Authorization certification" (section 1a) and the "written authorization" (section2dii). The NJBA understands that this language is also referenced in the NJPDES regulations N.J.A.C. 7:14A-4.9, and would require rule amendment to change the definition. However, the NJBA respectfully recommends that section be re-drafted to better distinguish these two documents (i.e. certification and authorization), as it would provide greater assurance to those taking the responsibility to sign as a "duly authorized representative" for the project site.

One suggestion is that current "I" be included with 2d as follows: "For a corporation or other entity under a., b., or c., by a duly authorized representative, provided that the representative is authorized by a person described in a., b., or c., above." Current "ii" should be new "e" and current "iii" should be included as new "e.i". Current "e" should be "f".

Further, NJBA recommends that an "s" be added after the word "representative" in section 2d. This would clarify that the authorization document could list one person authorized to submit and sign the RFA Certification and another person as responsible for compliance with the permit requirements.

The NJBA also recommends that the Department should provide clarification on how it interprets the status of "duly authorized representative" by way of guidance and/ or the response to comments document.

RESPONSE:

The Department agrees with the comment and will adjust the permit language as recommended.