



## State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION  
Bureau of Nonpoint Pollution Control  
Division of Water Quality

JON S. CORZINE  
Governor

MARK N. MAURIELLO  
Commissioner

### RESPONSE TO COMMENTS

#### Hot Mix Asphalt Producers Stormwater General Permit – NJ0132721

The New Jersey Department of Environmental Protection (Department) accepted comments on the draft renewal of the New Jersey Pollutant Discharge Elimination System (NJPDES) Hot Mix Asphalt Producers Stormwater General Permit (General Permit) – NJ0132721 beginning March 25, 2009 and ending April 23, 2009.

Comments on the draft renewal general permit are addressed below.

The following persons submitted timely comments in writing.

#### List of Commenters:

1. Carol M. Fulton, Associate Executive Director  
New Jersey Asphalt Pavement Association

The timely submitted comments and the Department's responses are summarized below.

#### **Drainage Control Plan**

**COMMENT:** The NJAPA requests that the requirement of a NJ licensed PE to certify the Drainage Control Plan based on topography prepared by a NJ licensed Land surveyor only applies to "new operations". NJAPA requests that the draft language be amended to clarify that any plant that currently under the Hot Mix Asphalt General Permit or a valid individual permit be exempt from this requirement.

**RESPONSE:** The Department agrees with NJAPA's request since many existing hot mix asphalt plants have implemented Drainage Control Plans (DCPs) that ensure drainage control and representative monitoring. Those facilities will be exempt from the requirement for a NJ licensed PE to certify the Drainage Control Plan (DCP) and for a NJ licensed Land Surveyor to measure elevations. The Department has added language exempting existing facilities from these requirements; however the Department retains the right to require existing facilities whose DCP does not adequately ensure hydraulic control or ensure representative monitoring to revise their DCP, have elevations measured by a NJ licensed Land surveyor and the plan certified by a NJ licensed PE.

### **pH Monitoring**

COMMENT: Part III Table – The current general permit for HMA plants does not include pH as a monitoring parameter. Since pH is not a parameter of concern for hot mix asphalt, NJAPA is requesting this parameter be omitted from Table III.

RESPONSE: The Department agrees with NJAPA that pH is not a pollutant of concern for the Hot Mix Asphalt industry. The US Environmental Protection Agency's NPDES Multi-Sector Permit, published in the September 29, 2008 Federal Register, Subpart-D, Sector-D which includes Hot Mix Asphalt manufacturers (SIC 2951) does not require monitoring for pH in stormwater discharges. The Department will remove the requirement to monitor pH in stormwater discharges to surface and ground water.

### **Inbound Quality Control**

COMMENT: Section E.3, Page 25 of 30 – NJAPA is requesting that this section be removed from the permit. The regulations regarding “inbound quality control”, applying to Class B facilities, is already regulated by the Division of Solid and Hazardous Waste and does not need to be part of this permit as well.

RESPONSE: The Department has compared the Concrete, Concrete Block, and Brick Recycling – Inbound Quality Control mandatory Best Management Practice contained in Part IV, Section E.3 of the general permit to the Division of Solid Waste's Class B Recycling Center General Approval and found that the best management practice is duplicative and sometimes contradictory. The Solid Waste Class B Recycling Center General Approval contains specific provisions which prohibits the commingling of materials, acceptance of contaminants (other than incidental amounts as defined by the approval), and prohibits hazardous waste. The general permit and Class B Recycling Center General Approval have contradictory requirements in dealing with loads that contain hazardous materials. The general permit requires rejecting of the load, while the Class B Recycling Center General Approval requires that the load be segregated and stored while the facility alerts the N.J.D.E.P. Hotline. The Department agrees with NJAPA and will remove the Concrete, Concrete Block, and Brick Recycling – Inbound Quality Control mandatory Best Management Practice and instead refer to the Class B Approval.

### **Existing Permittees, New Permittees and New Operations**

COMMENT: Part III Table – The table references that reporting requirements are to commence “24 months after the EDPA for new permittees” which is inconsistent with the language on page 27 of 30, requiring the commencement of monitoring 6 months after EDPA. NJAPA is requesting clarification as to why there is a different set of monitoring deadlines for plants that are deemed “new permittees” than there would be for existing plants.

Part IV.A.2.b.vi – NJAPA is requesting that the definition of “Existing Permittee” include HMA plants who are currently covered under a valid NJPDES Individual Permit. The permit draft language suggests that any plant not under the General Permit is defined as “New”.

Part IV.A.2.b.xii – The definition of a new permittee should include facilities that are covered under a valid NJPDES permit authorization stormwater discharges, such as a valid individual permit

RESPONSE: The Department defines three classes or types of facilities in this general permit as follows:

**“Existing Permittee”** means a facility that was authorized under the Hot-Mix Asphalt Producers Stormwater General Permit (NJ0132721) on April 30, 2009.

**“New permittee”** means an existing hot-mix asphalt producer with a stormwater discharge associated with the regulated industrial activity that has already commenced operations and was not authorized under the Hot-Mix Asphalt Producer Stormwater General Permit on May 1, 2009.

**“New Operation”** means a hot-mix asphalt producer that has yet to commence the discharge of stormwater associated with the regulated industrial activity.

Existing permittees are those facilities already authorized under the general permit. They have had five (5) years to prepare and implement a Stormwater Pollution Prevention Plan (SPPP) and Drainage Control Plan (DCP). Monitoring begins six (6) month after the effective date of permit authorization. New facilities are those Hot Mix Asphalt Plants who currently exist but have failed to apply for a NJPDES stormwater permit. Those facilities have been operating without a NJPDES permit and will be referred to the Department’s Water Compliance and Enforcement Element for appropriate action. However the general permit contains a twenty-four (24) month implementation schedule to prepare and implement a SPPP and DCP. Once those requirements are implemented monitoring begins. New Operations are newly constructed Hot Mix Asphalt Plants. They must have all general permit requirements (SPPP and DCP) implemented prior to commencing operations. Monitoring begins for those facilities immediately upon authorization. An existing Hot Mix Asphalt plant that is currently authorized under an individual NJPDES stormwater permit is treated like a New Operation. Prior to the Department allowing the facility to move from the individual NJPDES permit to the general permit the facility must demonstrate that they are in compliance with the conditions of the general permit and have implemented a SPPP and DCP. Monitoring begins for those facilities begin immediately upon revocation of the individual NJPDES permit and authorization under the general permit.

### **Monitoring for Benzene**

COMMENT: Pages 11 and 12 of 31. NJAPA is requesting that the draft permit be amended to state that testing for benzene is not a requirement if benzene is contained in an area that is under cover, enclosed or otherwise shielded.

RESPONSE: The Department does not agree with NJAPA’s comment that monitoring for benzene should not be required if “cold patch” is kept under cover. The Department believes that term “under cover” is too vague and would allow facilities to circumvent monitoring by tarping. Tarping alone does not adequately prevent contact of stormwater from “cold patch”. However, the Department will not require monitoring for benzene if “cold patch” is stored within a permanent structure. Permanent structure is defined as the following:

**“Permanent Structure”** means a building or structure that is anchored to a permanent foundation with an impermeable floor, and that is completely roofed and walled.

### **Separating Non-Industrial Stormwater Flows**

COMMENT: Section B2.g, page 19 of 30. NJAPA is recommending that the following be added at the end of the section, “to the degree possible”. Industry feels that this should not be an absolute requirement, but left up to the discretion of the facility.

RESPONSE: The Department believes that there are many important reasons for separating the discharge of stormwater not associated with the regulated industrial activity like roof top runoff, and employee parking, from the regulated stormwater discharge. Removing these “clean” stormwater discharges reduces the volume of water collected and, if discharging to ground water, allows the permittee to reduce the size of the infiltration basin. Also, by removing these “clean” stormwater discharges the Department believes the monitoring of stormwater associated with regulated industrial activity is more representative of that activity. However due to site constraints and grading issues, it may prove very difficult and costly to remove these “clean” stormwater flows. Therefore, the Department will allow for some flexibility and include the term “maximum extent practicable” at the end of the general permit requirement.

### **Recyclable Materials at Hot Mix Asphalt Plants**

COMMENT: NJAPA requests that the permit be changed to include “and other concrete products such as concrete pipe and asphalt materials”, since these materials are sometimes present in unprocessed and processed recyclable material stockpiles at Class B facilities.

RESPONSE: The general permit authorizes the existing industrial stormwater discharges to surface and/or ground waters of the State from facilities primarily engaged in the manufacture of asphalt concrete or asphalt concrete products and the ancillary processing of asphalt pavement, concrete, concrete block, concrete products and brick as authorized in a Class B permit issued by the Department. The Department believes “concrete pipe and asphalt materials” are covered under this authorization as long as the recycling of those materials are expressly noted in the facilities Class B Recycling Center Approval issued by the Division of Solid waste.

### **Alternate Best Management Practices**

COMMENT: Section E.1.b. Page 25 of 30 – Industry is asking for clarification as to why there is a prohibition against an “alternate BMP” that achieves the same level of protection. NJAPA is requesting that this section be removed, as it is stifling to any of our plants that may be utilizing new technologies, etc.

RESPONSE: The Department agrees that the language identified by NJAPA was misleading. A permittee may implement any BMPs at the facility that they feel is appropriate as long as those BMPs are in addition to the Mandatory Best Management Practices identified in Part I, Section E. of the general permit.