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Arkansas Department of Environmental Quality Public Notices Draft Permit Renewal/Stormwater Discharges Associated with Construction Activity

Arkansas Environmental, Energy, and Water Law Blog

04/21/2016

The Clean Water Act National Pollution Discharge Elimination System (“NPDES”) stormwater program regulates certain stormwater discharges from three potential sources:

- Municipal separate storm sewer systems
- Industrial activities
- Construction activities

As noted, this ADEQ public notice addresses the stormwater permit for construction activities. ADEQ has been authorized to implement the stormwater NPDES permit program for the State of Arkansas.

The ADEQ Public Notice Fact Sheet lists what it characterizes as 10 “major changes” to the current construction stormwater permit.

- Definitions for ERW, ESW, NSW and Waters of the State have been added to Part I.A.
- Parts I.B.6.B and Part I.B.7.A. have been changed to require that the Notice of Intent (NOI), Stormwater Pollution Prevention Plan (SWPPP), and permit fee be submitted to the Department 30 calendar days prior to the date coverage is desired. This is due to the extensive review time necessary for the Department to make a determination based on the review of all applicable information, including TMDLs and the proximity to environmentally sensitive waterbodies.
- Part I.B.6.D has been added to include the requirement for the permittee to submit a \$200 permit modification fee and updated SWPPP with any request to increase the total acreage of a construction site. An update SWPPP should be submitted with any request to increase the disturbed acreage of a construction site (no permit modification fee is required unless there is a change in the total acreage of the site).
- Part I.B.7.C. has been changed to state that permittees are authorized to discharge stormwater from the construction site 30 days after the NOI is deemed complete by ADEQ. This is due to the extensive review time necessary for the Department to make a determination on permit eligibility, including a review of TMDLs and environmentally sensitive waterbodies. Upon request by the permittee, the Department will provide the administrative completeness date. The burden of proof is on the permittee to show that ADEQ has received the NOI.

- Part I.B.11.D. has been changed to include that a quarterly report shall be submitted to the Department if a numeric limit has been assigned to the facility based on an approved TMDL.
- Part I.B.11.F. has been added to exclude construction sites from coverage under this general permit if the site discharges directly into an Extraordinary Resource Water (ERW), Natural and Scenic Waterways (NSW), or Ecologically Sensitive Waterbodies (ESW), unless proper BMPs are in place to prevent possible exposure to stormwater of pollutants that could potentially impact water quality.
- Part I.B.12. has been added to clarify that this general permit does not authorize any activity under a Short term Activity Authorization (STAA) or Section 404 permit;
- Part II.A.1.C. has been changed to require the permittee to update the SWPPP to meet any new requirements of this renewal permit by the effective date of the permit. The permit will be issued at least six months before the effective date of the permit, which the Department believes to be sufficient time to update the SWPPP.
- Part II.B.4 has been changed to clarify the deadline for submittal of the Renewal NOI after issuance of the renewed permit. The Renewal NOI should be submitted to the Department up to 180 days prior to the expiration date, but no later than 30 days prior to the expiration date. This is because the renewed permit will be issued at least six months prior to the effective date of the permit, which allows the permittee sufficient time to submit the required Renewal NOI to the Department. The Renewal NOI is due to the Department no later than 30 days prior to the expiration date in order to allow sufficient time for processing due to the large number of construction sites covered under this general permit.
- Parts I.B.13.A.1, 2, 6 and 7, Part I.B.13.B, and Part I.B.13.D.2. have been updated to reflect the 2014 updates to the Effluent Limitations, Guidelines and Standards: Construction and Development Point Source Category found in 40 CFR 450.21.

The current five year ADEQ construction stormwater permit is scheduled to expire on October 31st.

One environmental professional relayed to me that a “major change” is the length of time for the Notice of Intent. This professional notes that “for large construction sites, there is a 30 day approval period before construction is authorized. This 30 day clock does not start until the NOI is judged to be administratively complete.”

It was also noted that ADEQ is “following EPA’s lead in using narrative criteria rather than numeric for the C&D ELG and there is an increased emphasis on protection of Extraordinary Resource Waters and other sensitive waterbodies.” This is apparently tracking EPA’s version of the construction stormwater permit.

THE PUBLIC COMMENT PERIOD FOR THIS DRAFT STORMWATER PERMIT ENDS ON APRIL 25TH.

A link to the draft stormwater permit can be found here <https://www.adeg.state.ar.us/water/>.