



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF MINING PROGRAMS

**APPROVAL OF COVERAGE UNDER THE GENERAL NPDES
PERMIT FOR STORMWATER DISCHARGES ASSOCIATED WITH
MINING ACTIVITIES (BMP GP-104)**

NPDES PERMIT NO: _____

Site Name & Location

Operator Name & Address

_____	_____
_____	_____
_____	_____
_____	_____

In compliance with the provisions of the Clean Water Act, 33 U.S.C. Section 1251 *et seq.* and Pennsylvania's Clean Streams Law, as amended, 35 P.S. Section 691.1 *et seq.*, the Department of Environmental Protection hereby approves the Notice of Intent (NOI) submitted for coverage to discharge stormwater to the following surface water(s):

subject to the Department's enclosed BMP GP-104 which incorporates all effluent limitations, monitoring and reporting requirements and other terms, conditions, criteria and special requirements for discharge composed entirely of stormwater associated, in whole or in part, with mining activity, as defined in this General Permit, to surface waters of the Commonwealth, including to municipal separate storm sewers and non-municipal separate storm sewer. Authorization to discharge is subject to the implementation of plans and additional associated information submitted as part of the Notice of Intent (NOI).

APPROVAL TO DISCHARGE IN ACCORDANCE WITH THE TERMS AND CONDITIONS HEREIN AND DESCRIBED IN SUPPLEMENTAL INFORMATION AND PLANS APPROVED BY THE DEPARTMENT COMMENCES ON THE DATE OF THE APPROVAL OF COVERAGE AND IS VALID UNTIL THE PERMIT EXPIRATION DATE PURSUANT TO SUCH TERMS AND CONDITIONS. THE PERMIT MAY BE TERMINATED OR REVISED PRIOR TO THE EXPIRATION DATE UPON PUBLIC NOTICE BY THE DEPARTMENT. NO CONDITION OF THIS PERMIT SHALL RELEASE THE OPERATOR FROM ANY RESPONSIBILITY OR REQUIREMENT UNDER PENNSYLVANIA, OR FEDERAL ENVIRONMENTAL STATUTES, AND REGULATIONS OR LOCAL ORDINANCES.

APPROVAL DATE: _____ EXPIRATION DATE: _____

AUTHORIZED BY: _____ TITLE: _____

ADDITIONAL INFORMATION FOR [NPDES No.]

[List notes and clarifications specific to the operation.]

SAMPLE
DRAFT



**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF MINING PROGRAMS**

**GENERAL NPDES PERMIT FOR STORMWATER DISCHARGES
ASSOCIATED WITH MINING ACTIVITIES (BMP GP-104)**

Under the authority of the The Clean Streams Law, 35 P.S. §§ 691.1-691.1001, The Clean Water Act, 33 U.S.C. §§ 1251-1387 and 25 Pa Code Chapters 92a and 102, the Department of Environmental Protection (Department) hereby authorizes, by General Permit, subject to the terms, conditions, and criteria set forth as follows, NPDES coverage for stormwater discharges associated with mining activities.

1. DEFINITIONS

Best Management Practices (BMPs) – Activities, facilities, measures, planning or procedures used to minimize accelerated erosion and sedimentation and manage stormwater to protect, maintain, reclaim, and restore the quality of waters and the existing and designated uses of waters within this Commonwealth before, during, and after earth disturbance activities. [25 Pa. Code § 102.1]

Department – The Department of Environmental Protection (“DEP”) of the Commonwealth.

Erosion and Sediment Control Plan (“E&S Plan”) – A site-specific plan included with the mining permit or authorization application identifying BMPs to minimize accelerated erosion and sedimentation and which meets the requirements of 25 Pa. Code Chapter 102.

Grab sample – An individual sample or composite sample collected at a randomly selected time over a period not to exceed 15 minutes.

High-quality or Exceptional Value waters (“HQ” or “EV”) – Designation given to waters with special protections as defined in 25 Pa. Code § 93.1.

Impaired waters – Surface waters that fail to attain one or more of the designated uses under 25 Pa. Code Chapter 93.

Instantaneous Maximum – The level not to be exceeded at any time in any grab sample.

Mining activities – For coal mining activity, this is synonymous with the definition for “Surface mining activities” as found in 25 Pa. Code §§ 87.1 and 88.1. For noncoal mining activity, this is synonymous with the definition for “Noncoal surface mining activities” as defined in 25 Pa. Code § 77.1.

NPDES permit – *National Pollutant Discharge Elimination System permit* – A permit issued by the Department under 25 Pa. Code Chapter 92a for a discharge to a surface water of the Commonwealth, which meets the requirements for the National system for the issuance of permits under section 402 of the Federal Clean Water Act (33 U.S.C.A. § 1342).

Notice of Intent (NOI) – The Notice of Intent for Coverage under the Pennsylvania General Permit for Stormwater Discharges Associated with Mining Activities (BMP GP-104).

Permittee – The operator listed as having coverage under this General Permit.

Pollution Prevention and Contingency (PPC) Plan – A written plan that identifies an emergency response program, material and waste inventory, spill and leak prevention and response, inspection program, housekeeping program, security and external factors, and that is developed and implemented at the construction site to control potential discharges of pollutants other than sediment into waters of this Commonwealth.

Operator – Person(s) or entity conducting mining activity that seek to be covered by or are approved for coverage under this General Permit. The operator name must match that of their mining authorization documents, and also that of “operator” in the associated mine operator’s license. If the activity under this General Permit is conducted by a designated contractor, the operator remains liable for the requirements in this permit.

Reclamation Plan – Approved documentation made part of a mining permit or other mining authorization that describes how the land surface will be restored as required by the appropriate regulations to meet an approved

post-mining land use. This plan includes activities such backfilling, regrading, soil stabilization, and revegetation. Once the operator completes the reclamation plan, reclamation bond(s) are released.

Stormwater – Runoff from precipitation, snow melt runoff, and surface runoff and drainage.

Stormwater Associated with Mining Activity – Stormwater that may enter surface waters of the Commonwealth or storm sewers from any conveyance used for collecting and conveying stormwater that is related to mining activities. This term does not include water diverted around a mine site.

Surface Waters – Perennial and intermittent streams, rivers, lakes, reservoirs, ponds, wetlands, springs, natural seeps and estuaries, excluding water at facilities approved for wastewater treatment such as wastewater treatment impoundments, cooling water ponds and constructed wetlands used as part of a wastewater treatment process [25 Pa. Code § 92a.1].

Total Maximum Daily Load (TMDL) – The sum of the individual wasteload allocations for point sources, load allocations for nonpoint sources and natural quality, and a margin of safety expressed in terms of mass per time, toxicity, or other appropriate measures. [25 Pa. Code § 96.1]

Toxic Pollutant – Any pollutant listed as toxic under Section 307(a)(1) of the Clean Water Act. [40 CFR 122.2 and 25 Pa. Code § 92a.2]

Wasteload allocation (WLA) – The portion of the surface water's loading capacity that is allocated to existing and future point source discharges. [25 Pa. Code § 96.1]

2. APPLICABILITY

- a. This General Permit applies to earth disturbance activity of one (1) acre or greater associated with mining and/or reclamation.
- b. This General Permit is issued in conjunction with a mining authorization where the only potential discharge to surface waters of the Commonwealth is stormwater associated with mining activity as defined in 25 Pa. Code Chapters 86-88 for coal and Chapter 77 for noncoal. Mining authorization types eligible for this general permit coverage are as follows: coal and noncoal mining permits, small noncoal (and bluestone) permits, noncoal mining General Permits, exploration activities, and activities authorized through a Government-Financed Construction Contract (GFCC) subject to 25 Pa. Code § 86.6 executed with the Department to achieve reclamation.
- c. Eligible discharges authorized under this permit are discharges of stormwater runoff to surface waters from coal and noncoal exploration, mining, and support areas, areas being reclaimed, and haul/access roads.
- d. This General Permit is not applicable for the following:
 - i. Sites that have coverage under an individual NPDES permit or other NPDES General Permit.
 - ii. Activities where one or more of the conditions listed in 25 Pa. Code § 92a.54(e)(1)-(9) exist, which is more appropriately controlled under an individual permit.
 - iii. Activities that will or have the potential to discharge to 'HQ' or 'EV' designated waters, including EV wetlands, which must be controlled under an individual permit.
 - iv. Activities where a discharge may result from underground mines, acid mine drainage, pumped groundwater, sewage, or water used to wash or otherwise refine the product or any discharge where stormwater is comingled with the aforementioned sources.
 - v. Activities that may result in a discharge to waters impaired for sediment-related causes or waters covered by an approved TMDL which states sediment as a pollutant of concern.
 - vi. Activities that may result in discharges of toxic substances at levels that exceed state water quality criteria for toxic substances.

3. GENERAL INFORMATION AND APPLICATION FOR COVERAGE

- a. Persons who seek to be covered by this General Permit, must submit an administratively complete and acceptable Notice of Intent (NOI) to the Department in the care of the appropriate District Mining Office. The NOI shall be filed in accordance with the detailed instructions specified in the NOI instruction package. The NOI form 5600-PM-BMP0008 is available through the Department's elibrary website www.depgreenport.state.pa.us/elibrary/.
- b. In conjunction with this General Permit, the same operator must also be issued an associated mining activity permit or other authorization as specified in 2.b. Additional information pertinent to this General Permit authorization may be included in the mining and/or reclamation activity authorization or the associated NOI documentation. Coverage under this General Permit shall only be valid for licensed mine operators.
- c. Persons who seek to be covered by this General Permit must complete a Pollution Prevention and Contingency (PPC) Plan as part of the NOI. The PPC plan shall be prepared in accordance with Pa. Code § 102.5(l) and maintained on site at all times and made available for review at the Department's request. This PPC plan form is included in the NOI package.
- d. The permittee is granted coverage within the valid time frame of this General Permit issuance. This General Permit will expire five (5) years from its date of issuance. The Department will publish a notice of the draft reissuance or an amended BMP GP-104 in the *Pennsylvania Bulletin* with an opportunity for public comment. The Department will also publish notice of the final reissued or amended permit. Any person wishing to be covered by the final, reissued or amended General Permit must submit an NOI to receive coverage. For existing permittees who wish to continue their coverage under a reissued or amended General Permit, they will be provided an option to certify that they accept the terms and provisions in the reissued or amended General Permit and will be required to provide only the additional information necessary under the reissued or amended General Permit in lieu of a new NOI. If the permittee is unable to comply with the reissued or amended General Permit, they must submit an individual NPDES application within 90 days of the publication of this General Permit.

4. EROSION AND SEDIMENTATION PLAN (E&S PLAN)

- a. Permittees covered by this General Permit shall develop, implement, and maintain erosion and sediment control BMPs and other pollution prevention measures required by this permit. Non-discharging BMPs are encouraged.
- b. The BMPs shall be designed to minimize the potential for accelerated erosion and sedimentation in order to protect and maintain water quality and existing and designated uses. BMPs shall be designed to accommodate runoff from a 10-yr, 24 hr storm event, a standard of the mining program. Various BMPs and their design standards are listed in the Erosion and Sediment Pollution Control Program Manual, TGD No. 363-2134-008, or an approved alternative, such as the Engineering Manual for Mining Operations, TGD No. 563-0300-101. The manuals are available from the Department or can be downloaded from the Department website www.depgreenport.state.pa.us/elibrary/.
- c. An E&S Plan that meets the requirements of 25 Pa. Code § 102.4(b) must be developed and implemented for the mining activity covered by this permit as part of the mining permit or authorization. An E&S Plan approved by the Department for the mining/reclamation activities, and the operator's NOI submitted for this General Permit are used together to describe the BMPs that are required by this General Permit.
- d. The Department may notify the permittee at any time if the activities being conducted pursuant to this permit are not meeting the conditions of the permit. Upon plan review or site inspection, the Department may require E&S Plan revisions or other appropriate action to ensure compliance with the conditions of this permit. If the General Permit conditions cannot be met, an individual NPDES permit will be required.
- e. The owner or operator of a facility with stormwater discharges covered by this permit shall make E&S plans available to the public upon request. E&S Plans must always be available at the site of the activity and available for review by the Department, Conservation District, or other authorized local, state, or federal government official.

5. RECLAMATION PLAN

- a. A Reclamation Plan which meets the requirements of the Surface Mining Conservation and Reclamation Act, 52 P.S. §§ 1396.1 et seq., the Noncoal Surface Mining Conservation and Reclamation Act, 52 P.S. §§ 3301 et seq., the Coal Refuse Disposal Control Act, 52 P.S. § 30.51 et seq., and 25 Pa. Code Ch. 77 or Chs. 86-90, as applicable, must be prepared, developed, and implemented for the mining activity covered by this permit as part of a mining authorization. The Reclamation Plan approved as part of a mining authorization, or an equivalent plan under a reclamation contract, shall describe regrading, revegetation, and other pollution prevention measures that will be employed.
- b. The Reclamation Plan shall be designed to ensure that existing and designated uses of surface water are protected and maintained. The Reclamation Plan shall be designed to replicate premining infiltration and runoff conditions to the maximum extent possible and shall comply with the requirements of §§ 77.521, 87.101 or 88.291. An approved Reclamation Plan has been deemed by the Department to meet the requirements with respect to the Post-Construction Stormwater Management Plan (PCSM Plan) as described in 25 Pa. Code § 102.8(n).
- c. If there are areas of permanent impervious surfaces that will not be reclaimed as part of the approved site Reclamation Plan, long-term post-construction stormwater management BMPs must be designed, implemented and maintained in accordance with 25 Pa. Code § 102.8, and the following apply:
 - (1) The permittee shall be responsible for long-term operation and maintenance of BMPs unless a different person identified after bond release is authorized and that person has agreed to long-term operation and maintenance of the BMPs.
 - (2) The permittee shall record an instrument with the Recorder of Deeds which will assure disclosure of the BMPs and related obligations in the ordinary course of a title search of the subject property. The recorded instrument must identify the BMPs, provide for necessary access related to long-term operation and maintenance for BMPs, and provide notice that the responsibility for such is a covenant that runs with the land that is binding upon and enforceable by subsequent grantee.
 - (3) The person responsible for performing long-term operation and maintenance may enter into a written agreement with another person, including a conservation district, nonprofit organization, municipality, authority, or private corporation, to transfer the responsibility for BMPs or to perform long-term operation and maintenance and provide notice thereof to the Department.
 - (4) A permittee that fails to transfer long-term operation and maintenance of the BMPs or otherwise fails to comply with this requirement shall remain jointly and severally responsible with the landowner for long-term operation and maintenance of the BMPs located on the property.

6. ADMINISTRATIVE REQUIREMENTS

- a. The authorization to use this General Permit shall continue until its expiration date or until bond release (see section 6.e). The permittee may renew their coverage under subsequent reissued General Permits or an individual NPDES permit until reclamation is completed and the site is stabilized. See section 3.d.
- b. The permittee must request, in writing, termination of coverage under this GP if it does not coincide with any of the following: bond release (see section 6.e.), termination due to transfer of mining permit, termination of a mining General Permit, termination of a GFCC, or expiration date of this General Permit.
- c. The permittee may be required to apply for an Individual NPDES permit in response to a written notice by the Department. This notice shall include the following: (1) a brief statement of the reasons for the decision, (2) instructions on how to access an application form for an Individual NPDES permit, and (3) a statement setting a 90-day deadline for the owner or operator to file the application.
- d. In the event that a timely, administratively complete, and acceptable NOI, or submission in lieu of an NOI under section 3.d., has been submitted and the Department is unable through no fault of the permittee to reissue the General Permit before its expiration date, the terms and conditions of the previously approved coverage will be automatically continued and will remain fully effective and enforceable pending the reissuance of the General Permit coverage, provided the permittee is, and has been, operating in compliance with the terms and conditions of the permit.

- e. Where all bond or liability is released (all stormwater discharges authorized under this approval are eliminated, and the Reclamation Plan is completed) coverage under this General Permit is automatically terminated.
- f. This approval to operate under the General Permit is not transferable.
- g. No condition of this permit shall release any person from any responsibility or requirements under other federal or Pennsylvania environmental statutes or regulations or local ordinances.

The NPDES General Permit for Stormwater Discharges Associated with Mining Activities BMP GP-104 is effective on New date and shall expire at midnight on New date unless reissued or amended on or before this date by the Department.

BY

DIRECTOR
BUREAU OF MINING PROGRAMS

PART A

EFFLUENT LIMITATIONS, MONITORING AND REPORTING REQUIREMENTS

A1. EFFLUENT LIMITATIONS

- a. This permit establishes performance-based narrative effluent limitations in the form of implemented BMPs identified in the associated E&S Plan, Reclamation Plan (which must meet the requirements of a Post Construction Stormwater Management Plan under 25 Pa. Code 102.8(n)) and the NOI for this General Permit. These BMPs manage the rate, volume, and quality of stormwater runoff and potential pollutants discharged into surface waters of the Commonwealth.
- b. BMPs must be consistent with Sections 4.b and c. of this permit (related to the approved Erosion and Sedimentation Plan) and the Reclamation Plan (Section 5) provided in the approved associated mining authorization. The permittee shall implement and maintain these BMPs for the extent of the mining activity.
- c. Discharges authorized under this General Permit shall meet any applicable TMDL. The discharge must not cause or contribute to an exceedance of applicable water quality standards. The Department may, at any time, revoke this general permit coverage for a mine site if the status of a watershed or receiving stream changes. In that circumstance, the operator can seek an individual NPDES permit with appropriate effluent limitations.
- d. Additional narrative effluent limits:
 - (i) The operator may not discharge floating materials, scum, sheen, or substances that result in deposits in the receiving water. The operator may not discharge foam, oil, grease, or substances that produce an observable change in the color, taste, odor, or turbidity of the receiving water. [25 Pa. Code § 92a.41(c)]
 - (ii) The operator may not discharge substances in concentration or amounts sufficient to be inimical or harmful to the water uses to be protected or to human, animal, plant or aquatic life. [25 Pa. Code § 93.6(a)]
- e. Point source discharges are subject to the following Table 1 effluent limits:

Table 1.

Parameter	Standard
pH	Greater than 6.0; less than 9.0 at all times
Total Suspended Solids	90 mg/l Instantaneous Maximum*
Total Settleable Solids	0.5 ml/l Instantaneous Maximum* Sampled within 24 hrs of a precipitation event, in lieu of total suspended solids.
* Any discharges resulting from a precipitation event exceeding a 10-yr, 24-hr. precipitation event are not subject to total suspended or settleable solids requirements.	

- f. The permittee shall minimize the exposure of manufacturing, processing, and material storage areas (including loading and unloading, storage, disposal, cleaning, maintenance, and fueling operations) to rain, snow, snowmelt, and runoff in order to minimize pollutant discharges. In addition, the permittee agrees to use the following management practices:
 - (i) Locate materials, equipment, and activities so that potential leaks and spills are contained or able to be contained or diverted
 - (ii) Clean up spills and leaks promptly using dry methods (e.g., absorbents) to prevent the discharge of pollutants
 - (iii) Store leaky vehicles and equipment indoors or, if stored outdoors, use drip pans and absorbents
 - (iv) Use spill/overflow protection equipment

- (v) Perform all vehicle and/or equipment cleaning operations indoors, under cover, or in bermed areas that prevent runoff and run-on and also that capture any overspray
- (vi) Drain fluids from equipment and vehicles that will be decommissioned, and, for any equipment and vehicles that will remain unused for extended periods of time, inspect at least monthly for leaks.
- (vii) Follow all provisions listed in the associated PPC plan submitted with the NOI for this general permit authorization.

A2. MONITORING AND REPORTING REQUIREMENTS

a. Visual Inspections.

The operator must ensure that visual site inspections are conducted and documented by qualified personnel, trained and experienced in erosion and sediment control, to ascertain that the Erosion and Sediment control (E&S) BMPs are operational and effective in preventing pollution to the waters of the Commonwealth. Inspection requirements are as follows:

- (i) Weekly when operating
- (ii) Monthly if not operating
- (iii) Within 24 hours after each 10 yr, 24-hr precipitation event

b. Written Reports.

A written report of each inspection shall be kept on-site, and include:

- (i) A summary of site conditions, BMPs, implementation and repair/maintenance and compliance actions; and
- (ii) The date, time, and the name and signature of the person conducting the inspection.

c. Non-compliance Reporting.

Where BMPs are found to be inoperative or ineffective during an inspection, or any other time the operator becomes aware of any incident causing or threatening pollution, as required by 25 Pa. Code § 92a.41(b), the operator shall, within 24 hours, contact the Department (the appropriate District Mining Office), followed by the submission of a written report within 5 days of the initial contact. Non-compliance reports shall include the following:

- (i) Any condition on the project site which may endanger public health, safety, or the environment, or involve incidents which cause or threaten pollution;
- (ii) The period of non-compliance, including exact dates and times and/or anticipated time when the activity will return to compliance;
- (iii) Steps being taken to reduce, eliminate, and prevent recurrence of the non-compliance; and
- (iv) The date or schedule of dates and identifying remedies for correcting non-compliance conditions.

Except for data determined to be confidential under Section 607 of the Clean Streams Law, all reports and other information regarding non-compliance reporting shall be available for public inspection at the appropriate District Mining Office.

d. Monitoring Requirements.

- (1) For those permits with a discharge, a grab sample must be taken during a discharge at every point source outfall at least once per year and at any time requested by the Department in order to establish that the BMPs are in good working order. The samples must be analyzed for pH, total suspended solids and total settleable solids. The results must be submitted to the District Mining Office and must contain the operator name, mining authorization (permit) number, operation name, township, county, date of sample and results. The original reporting sheets from the testing laboratory must be included.

- (2) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.
- (3) Monitoring must be conducted according to test procedures approved under 40 CFR Part 136 unless another method is required under 40 CFR subchapters N or O.
- (4) The Department may require additional monitoring where an increased risk of water pollution is present, or when water pollution is suspected to be occurring from the mining activity associated with this General Permit, or for any reason in accordance with, 25 Pa. Code § 92a.61 (related to monitoring). The permittee shall commence such monitoring upon notification from the Department. Monitoring results shall be submitted to the Department.
- (5) The permittee must comply with the federal electronic reporting rule 40 CFR Part 127: NPDES Electronic Reporting. The Department will supply instructions for electronic registration and reporting.

A3. RECORD KEEPING

- a. The operator shall retain records of all monitoring information including copies of all monitoring and inspection reports required by this permit, all monitoring information (including site log book, calibration and maintenance records) and records of data used to complete the NOI for this permit, for a period of three years from the date of the termination of coverage under this permit. This period of retention must be extended during the course of any unresolved compliance, enforcement, or litigation, or when requested by the Department.
- b. Records of monitoring information shall include:
 - (i) The date, exact place, and time of sampling or measurements;
 - (ii) The individual(s) who performed the sampling or measurements;
 - (iii) The date(s) analyses were performed;
 - (iv) The individual(s) who performed the analyses;
 - (v) The analytical techniques or methods used; and
 - (vi) The results of such analyses.
- c. Visual inspection monitoring results shall be kept on-site and submitted to the Department upon request.

PART B STANDARD CONDITIONS

Standard permit conditions of Part B are consistent with the general permit provisions required under 40 CFR 122.41.

B1. Nothing in this General Permit shall be construed to preclude the institution of any legal action or to relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable state law or regulation under authority preserved by Section 510 of the Clean Water Act (33 U.S.C.A. § 1370).

B2. *Permit Modification, Termination, or Revocation and Reissuance.*

- a. Coverage under this General Permit may be modified, suspended, revoked, reissued, or terminated during its term for any of the causes specified in 25 Pa. Code Chapters 92a (relating to NPDES permitting, monitoring and compliance) and 102 (relating to erosion and sediment control), or to require compliance with updated effluent limitation guidelines, water quality standards, impaired water listings, or newly approved TMDLs.
- b. The Department may elect to modify the permit prior to its expiration date (rather than waiting for the new permit cycle) to comply with any new statutory or regulatory requirements, such as for effluent limitation guidelines that may be promulgated in the course of the current permit cycle.
- c. If there is evidence indicating that the stormwater discharges authorized by this permit cause, have the reasonable potential to cause, or contribute to an excursion above any applicable water quality standard, the operator may be required to obtain an individual permit, or the permit may be modified to include different limitations and/or requirements.
- d. The Department may modify, revoke, suspend, or terminate previously issued coverage under this General Permit and require the operator to apply for and obtain an Individual NPDES Permit in accordance with 25 Pa. Code Chapters 92a and 102.
- e. The filing of a request by the permittee for a General Permit or coverage modification, revocation, reissuance, or termination, or a notification of planned changes or anticipated non-compliance, does not eliminate any existing General Permit conditions.
- f. General Permit coverage modification or revocation will be conducted according to 25 Pa. Code Chapters 92a and 102.

B3. *Duty to comply.* The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

- a. The permittee must comply with effluent standards or prohibitions established under section 307(a) of the Clean Water Act for toxic pollutants within the time provided in the regulations that establish these standards, even if the permit has not yet been modified to incorporate the requirement.
- b. The Clean Water Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than 2 years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment is a fine of not more than \$20,000 per day of violation, or by imprisonment of not more than 4 years, or both.
- c. **Penalties for Violations of Permit Conditions:** The EPA Director will adjust the civil and administrative penalties listed below in accordance with the Civil Monetary Penalty Inflation Adjustment Rule (61 FR 252, December 31, 1996, pp. 69359-69366, as corrected in 62 FR 54, March 20, 1997, pp.13514-13517) as mandated by the Debt Collection Improvement Act of 1996 for inflation on a periodic basis. This rule allows EPA's penalties to keep pace with inflation. The EPA is required to review its penalties at least once every 4 years thereafter and to adjust them as necessary for inflation according to a specified formula. The civil and administrative penalties following were adjusted for inflation starting in 1996.

1. Criminal Penalties.

1.1 Negligent Violations. The CWA provides that any person who negligently violates permit conditions implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to criminal penalties of not less than \$2,500 nor more than \$25,000 per day of violation, or imprisonment of not more than one year, or both. In the case of a second or subsequent conviction for a negligent violation, a person shall be subject to criminal penalties of not more than \$50,000 per day of violation or by imprisonment of not more than two years, or both.

1.2. Knowing Violations. The CWA provides that any person who knowingly violates permit conditions implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less than \$5,000 nor more than \$50,000 per day of violation, or by imprisonment for not more than 3 years, or both. In the case of a second or subsequent conviction for a knowing violation, a person shall be subject to criminal penalties of not more than \$100,000 per day of violation, or imprisonment of not more than 6 years, or both.

1.3. Knowing Endangerment. The CWA provides that any person who knowingly violates permit conditions implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act and who knows at that time that he or she is placing another person in imminent danger of death or serious bodily injury shall upon conviction be subject to a fine of not more than \$250,000 or by imprisonment of not more than 15 years, or both. In the case of a second or subsequent conviction for a knowing endangerment violation, a person shall be subject to a fine of not more than \$500,000 or by imprisonment of not more than 30 years, or both. An organization, as defined in section 309(c)(3)(B)(iii) of the Act, shall, upon conviction of violating the imminent danger provision be subject to a fine of not more than \$1,000,000 and can fined up to \$2,000,000 for second or subsequent convictions.

1.4. False Statement. The CWA provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than 2 years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment is a fine of not more than \$20,000 per day of violation, or by imprisonment of not more than 4 years, or both. The Act further provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or non-compliance shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.

2. Civil Penalties. The CWA provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a civil penalty not to exceed the maximum amounts authorized by Section 309(d) of the Act and the Federal Civil Penalties Inflation Adjustment Act (28 U.S.C. § 2461 note) as amended by the Debt Collection Improvement Act (31 U.S.C. § 3701 note) (currently \$37,500 per day for each violation).

3. Administrative Penalties. The CWA provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to an administrative penalty, as follows:

3.1. Class I Penalty. Not to exceed the maximum amounts authorized by Section 309(g)(2)(A) of the Act and the Federal Civil Penalties Inflation Adjustment Act (28 U.S.C. § 2461 note) as amended by the Debt Collection Improvement Act (31 U.S.C. § 3701 note) (currently \$16,000 per violation, with the maximum amount of any Class I penalty assessed not to exceed \$37,500).

3.2. Class II Penalty. Not to exceed the maximum amounts authorized by Section 309(g)(2)(B) of the Act and the Federal Civil Penalties Inflation Adjustment Act (28 U.S.C. § 2461 note) as amended by the Debt Collection Improvement Act (31 U.S.C. § 3701 note) (currently \$11,000 per day for each day during which the violation continues, with the maximum amount of any Class II penalty not to exceed \$177,500).

B4. *Duty to reapply*. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit.

- B5. *Need to halt or reduce activity not a defense.* It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.
- B6. *Duty to mitigate.* The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.
- B7. *Proper operation and maintenance.*
- a. The permittee must at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems which are installed only when the operation is necessary to achieve compliance with the conditions of this permit.
 - b. Upon reduction, loss, or failure of any BMP, the permittee shall take immediate action to restore, repair, or replace the BMP or to provide an alternative method of treatment. Such restored BMP or alternative treatment shall be at least as effective as the original BMP when properly installed. These actions shall be undertaken to ensure that there are no pollutants or pollution discharged to the waters of the Commonwealth. This requirement is applicable in situations where the BMP is rendered ineffective, whether the cause or source of the reduction, loss or failure is within or beyond the control of the permittee.
- B8. *Property rights.* This General Permit does not convey any property rights of any sort, or any exclusive privileges, and this General Permit does not authorize any injury to private property, invasion of personal rights, or infringement of federal, state, or local laws or regulations.
- B9. *Duty to provide information.*
- a. The permittee shall furnish to the Department, within a reasonable time, any information which the Department may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The permittee shall also furnish to the Department upon request, copies of records required to be kept by this permit. (25 Pa. Code § 92a.41(a) and 40 CFR § 122.41(h))
 - b. When the permittee becomes aware that they failed to submit any relevant facts or submitted incorrect information in the NOI, E&S Plan, or PPC Plan or in any other report to DEP, the permittee shall within 24 hours of becoming aware of the deficiency submit or correct such facts or information. (25 Pa. Code § 92a.41(a) and 40 CFR § 122.41(l)(8))
 - c. The permittee shall give seven (7) calendar days advance notice to DEP of any planned physical alterations or additions to the permitted facility which could, in any way, substantially affect the quality and/or quantity of stormwater discharged from the activity.
- B10. *Anticipated noncompliance.* The permittee shall give advance notice to the Department of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.
- B11. *Right of entry.* The permittee shall allow the Department, or an authorized representative (including an authorized contractor acting as a representative of the Department, EPA or County Conservation District), upon presentation of credentials and other documents as may be required by law, to:
- (1) Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
 - (2) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
 - (3) Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
 - (4) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act, any substances or parameters at any location.

B12. *Signatory requirement.*

- a. All applications, reports, or information submitted to the Department shall be signed and certified by an authorized representative of the permittee.
 - 1. For a corporation: By a responsible corporate officer. For the purpose of this subsection, a responsible corporate officer means: (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
 - 2. For a partnership or sole proprietorship: By a general partner or the proprietor, respectively; or
 - 3. For a municipality, state, federal, or other public agency: By either a principal executive officer or ranking elected official. For purposes of this subsection, a principal executive officer of a federal agency includes (i) the chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.
- b. For persons signing documents electronically, such signatures must be legally dependable with no less evidentiary value than their paper equivalent.
- c. Section 309(c)(4) of the Clean Water Act (33 U.S.C.A. § 1319(c)(4)) provides that any person who knowingly makes any false material statement, representation, or certification in any record or other document submitted or required to be maintained under this General Permit, including reports of compliance or noncompliance shall, upon conviction, be punished by a fine of not more than \$10,000 or by imprisonment for not more than two (2) years or by both a fine and imprisonment. In addition, criminal sanctions are set forth for false swearing and unsworn falsification at 18 Pa.C.S. §§ 4903-4904.

B13. *Severability.* The provisions of this General Permit are severable, and if any provision of this General Permit, or the application of any provision of this General Permit to any circumstance, is held invalid, the application of such provision to other circumstances and the remainder of this General Permit shall not be affected thereby.

B14. *Twenty-four-hour reporting.*

- a. The permittee must report any noncompliance which may endanger health or the environment. Any information must be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission must also be provided within five days of the time the permittee becomes aware of the circumstances. The written submission must contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.
- b. The following shall be included as information which must be reported within 24 hours under this paragraph.
 - (i) Any unanticipated bypass which exceeds any effluent limitation in the permit. (See 40 CFR 122.41(m)(3)(ii)).
 - (ii) Any upset which exceeds any effluent limitation in the permit.
 - (iii) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Department in the permit to be reported within 24 hours. (See 40 CFR 122.44(g))
- c. The Department may waive the written report on a case-by-case basis for reports under this section if the oral report has been received within 24 hours.

B15. *Oral notification of incidents of pollution.* The permittee shall comply with the immediate oral notification requirements of 25 Pa. Code § 91.33 (relating to incidents causing or threatening pollution). Oral notification is required as soon as possible, but no later than 4 hours after the permittee becomes aware of the incident causing or threatening pollution. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the incident causing or threatening pollution. The written submission must conform to the requirements of 40 CFR 122.41(l)(6).

B16. *Bypass.*

a. *Definitions.*

- (i) *Bypass* means the intentional diversion of waste streams from any portion of a BMP.
- (ii) *Severe property damage* means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

b. *Bypass not exceeding limitations.* The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs c and d of this section.

c. *Notice.*

- (i) *Anticipated bypass.* If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible, at least ten days before the date of the bypass. See 40 CFR 122.41(m)(3)(i).
- (ii) *Unanticipated bypass.* The permittee shall submit notice of an unanticipated bypass as required in condition #16 of this section (24-hour notice). See 40 CFR 122.41(m)(3)(ii).

d. *Prohibition of bypass.*

- (i) Bypass is prohibited, and the Department may take enforcement action against a permittee for bypass, unless:
 - (A) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
 - (B) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
 - (C) The permittee submitted notices as required under paragraph (3) of this section.
- (ii) The Department may approve an anticipated bypass, after considering its adverse effects, if the Department determines that it will meet the three conditions listed above in paragraph (4)(i) of this section.

B17. *Upset.*

- a. *Definition.* Upset means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the permittee's reasonable control. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation. See 40 CFR 122.41(n)(1).
- b. *Effect of an upset.* An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of 18.c are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review. See 40 CFR 122.41(n)(2).

- c. *Conditions necessary for a demonstration of upset.* See 40 CFR 122.41(n)(3). A permittee who wishes to establish the affirmative defense of upset must demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
- (i). An upset occurred and that that permittee can identify the cause(s) of the upset;
 - (ii). The permitted facility was at the time being properly operated; and
 - (iii). The permittee submitted notice of the upset as required in Appendix B, Subsection 12.F.2.b (24-hour notice).
 - (iv). The permittee complied with any remedial measures required under Appendix B, Subsection 4.
 - (v). Burden of proof. In any enforcement proceeding, the permittee, as the one seeking to establish the occurrence of an upset, have the burden of proof. See 40 CFR 122.41(n)(4).