

Jessica Shirley
Director, Office of Policy
Pennsylvania Department of Environmental Protection
Rachel Carson State Office Building
P.O. Box 2063
Harrisburg, PA 17105-2063

Feb. 22, 2022

RE: Public Notice of Draft NPDES General Permit for Discharges of Stormwater Associated with Industrial Activity (PAG-03)

Dear Ms. Shirley:

The Pennsylvania Chamber of Business and Industry (PA Chamber), the largest, broad-based business advocacy group in the Commonwealth, appreciates the opportunity to comment on the Pennsylvania Department of Environmental Protection's ("DEP" or "Department") draft Discharges of Stormwater Associated with Industrial Activity (PAG-03).

For the past several decades, the Chamber has been actively involved in issues relating to stewardship of Pennsylvania's waterways, wetlands and other aquatic resources, bringing the perspective of the regulated community to issues such as the development and refinement of various water quality standards, policies and regulations.

First, we note that this permit had administratively expired in September 2021. We appreciate the Department was able to secure an administrative extension of the permit for an additional year, but nonetheless we still encourage DEP to finalize this general permit as soon as possible in order to provide regulatory certainty to the more than 1,900 facilities in the state which are covered by this permit.

Second, the Chamber supports increasing the benchmark value for TSS to 150 mg/L as proposed. Such a change is reasonable given regulatory requirements to control sediment and manage stormwater collection and disposal.

Third, it is unclear why industrial facilities should be required to monitor and report for Total Nitrogen and Total Phosphorus. Given the inherent operational profiles of most industrial facilities and the applicable regulatory requirements that limit the facility's exposure to rainfall and that require the facility to manage its runoff, such operations are unlikely to be sources of significant amounts of nitrogen and phosphorus through runoff. The Chamber does not support adding this regulatory requirement as it is not clear such a provision provides a net-positive between costs and benefits.

Fourth, the Chamber supports the proposed clarification to allow facilities with BMPs that result in no discharges to report there were no discharges in the DMR.

Finally, the Chamber requests clarification in the final draft permit or associated technical guidance documents how the Department will adjudicate differences in opinion between a permittee and the Department regarding proposed measures in a submitted Corrective Action Plan and Stormwater BMP Checklist, as needed to satisfy the proposed general permit's provisions to address four consecutive quarters of benchmark value exceedences. The BMP checklist is quite prescriptive with respect to not merely achieving a particular outcome – returning discharges and runoff to below benchmark levels – but

the means by which that outcome occurs. The draft checklist also appears to afford permittees the ability to not construct or install such BMPs due to feasibility reasons. However, it is unclear what criteria DEP will use to determine feasibility, which in common usage denotes something done easily. In the context of air quality, feasibility denotes whether a control measure is above or below a cost-per-ton threshold. In this revision to PAG-03, the Department has not defined how easily a change must be made to be feasible, nor a cost-benefit threshold for the BMP to be considered cost-effective.

In many circumstances, we believe that the proposed BMPs will not be cost-effective, such as the checklist in Appendix J which proposes to require impervious pads, secondary containment, permanent covers and relocating material indoors – even if the material is stored in a tightly sealed drum. This contradicts and is in tension with the criteria for a no exposure certification through an NOI which allows tightly sealed containers to be stored without permanent cover or secondary containment. Why would a BMP exceed the criteria for what is considered operation practices that result in no exposure?

Further, Appendix S recommends impervious pads and cover (i.e., paving), not unloading material during rainfall, and installing oil-water separators. We believe these BMPs will not be feasible for a great number of facilities, as the cost of paving an acre is estimated to be greater than \$150,000 (and higher if using concrete). Facilities that operate 24/7 may not have the option to suspend loading during rain events. Finally, it is unclear why Appendix S would require oil-water separators when oil and grease are not required to be measured for these sources under the proposed permit conditions.

We recommend the Department instead adopt a more flexible, opt-in approach, at the discretion of the permittee, to BMPs so as to result in improved performance with respect to benchmark values, instead of a prescriptive list which the permittee may opt out of only at the approval of the Department. We believe such flexibility will not only result in the desired outcome of more quickly arriving at benchmark values, but lessen the strain on the Department in adjudicating differences of professional opinion regarding vaguely defined feasibility of prescribed approaches.

Thank you for your consideration of our perspective on this matter, and we welcome the opportunity to discuss this matter further with staff as needed.

Sincerely,



Kevin Sunday
Director, Government Affairs