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April 27, 2022

Joseph Crook  
Department of Environmental Quality  
Joseph.Crook@deq.virginia.gov

Sent via email

Re: Comments in Response to NOIRA for General VPDES Permit for Discharges of Stormwater from Construction Activities

*Board of Directors:*

Dear Mr. Crook:

I am submitting these comments on behalf of Wild Virginia. We believe the process for developing the new version of the referenced permit must include analyses that have previously not been conducted, to determine whether there is a reasonable potential that discharges authorized by the permit will result in water quality standards (WQS) violations. Further, we assert that discharges made from sites covered by the conditions in the current general permit have resulted in WQS violations and that changes must be made to prevent these occurrences in the future.

Also, Wild Virginia would like to be part of the Technical Advisory Committee (TAC) to work on developing the new permit. We have extensive experience with both the technical and legal/regulatory issues involved and are prepared to contribute to the deliberations of the group.

#### Water Quality Standards

Virginia Pollution Discharge Elimination System (VPDES) permits must ensure that all provisions of the water quality standards<sup>1</sup> will be met by discharges authorized under the permit conditions. This is true for general as well as individual VPDES permits. Therefore, the Department of Environmental Quality (DEQ) must conduct a reasonable potential analysis before issuance of this permit.

In this regard, our concerns include but are not limited to the following:

- All pollutants or parameters that are pertinent to the discharges' impacts on state waters must be analyzed and appropriately controlled under the permit. Solids carried in runoff water must, of course, be addressed but examples of other parameters that are affected by the activities involved with construction include temperature and a range of pollutants that may be released to streams when soils are disturbed.

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<sup>1</sup> 9VAC25-260-5. et seq.

Water temperatures may well be increased in runoff from developed sites and could have serious impacts on coldwater streams and aquatic biota. Further, where runoff water is trapped in detention basins or other structures, temperatures may be substantially raised. For trout waters or waters that are habitat for other sensitive coldwater species, these impacts may be of great concern.

Pollutants such as phosphorus, heavy metals like arsenic, and organic chemicals are often bound to soil particles and may be discharged. These materials may reach the streams attached to the soils or detached during treatment of the runoff and discharged separately from solids. We know that soils in some areas of Virginia have significant amounts of arsenic bound to clays due to historic use of pesticides, particularly on orchards. Likewise, applications of sewage sludge and poultry waste have resulted in the deposition of a range of metals and organics that can affect the quality of the discharges. Some of these pollutants may be discharged upon land disturbance.

- All parts of the WQS regulations must be considered in the permit review and controls must be designed to meet them. If support of any criteria, narrative and numeric, and of the antidegradation policy cannot be assured under the general permit conditions, this permit review should specify such situations and require applicants to seek individual VPDES permits. DEQ has previously refused to analyze possible interference with recreation or other human uses from construction stormwater discharges and this deficiency must be remedied. Sediment-laden discharges that threaten aquatic life have also been allowed without proper acknowledgement or controls.

Before DEQ can assess compliance with antidegradation, information about baseline conditions must be collected. This would likely need to be supplied to the agency at the time a registration statement is submitted and the permit must specify the nature and quality of such data to be submitted in every necessary case. Where high quality would be lowered, this can only be allowed after a social or economic necessity is proven.

- The effectiveness and pollutant removal efficiencies of best management practices (BMPs) for erosion and sediment control can vary greatly and cannot be relied upon to ensure compliance with WQS without additional analysis. For example, where soils are heavy in clay-sized particles settling structures and filtering devices will often be inadequate to remove these pollutants and protect receiving waters. For this and other reasons, it will be necessary to require enhanced treatment methods in some areas.
- The requirements of the permit should include measures such as limits to the amount of area to be disturbed at any one time in preference to merely structural measures of pollution control.
- DEQ must anticipate that a full analysis of all pollution parameters and all parts of the WQS will make more sites ineligible for coverage under the general permit. Procedures must be developed to enhance the collection and analysis of necessary information to make this screening decision efficient and reliable. We ask that, during this permit

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review, DEQ provide detailed information about its procedures and practices for reviewing registration statements, any occasions where additional information was required of applicants, and any instances when proposed activities were deemed ineligible for general permit coverage.

TAC Participation

I volunteer to serve as Wild Virginia's primary representative on the TAC. My full contact information is as follows:

David Sligh  
Conservation Director  
Wild Virginia  
P.O. Box 1065  
Charlottesville, Virginia 22902  
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434-964-7455

I will supply contact information about an alternate to represent Wild Virginia at a later date.

Thank you for considering our comments and we look forward to participation in the permit review and development process.

Sincerely,

/s/ David Sligh

David Sligh  
Conservation Director

cc: Jacquelyn Goodrum, Wild Virginia