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DEP Completes Hearing on Draft General Permit for Discharge of Stormwater and Dewatering Wastewater from Construction Activities

On June 23, 2011, the Connecticut Department of Environmental Protection* (“DEP”) held a public hearing to receive comments on proposed revisions to the General Permit for the Discharge of Stormwater and Dewatering Wastewater from construction activities. This summary selects elements of the General Permit for consideration, as highlighted from the DEP’s Fact Sheet [http://www.ct.gov/dep/lib/dep/public_notice_attachments/general_permits/construction_general_permit_fact_sheet.pdf] and at the hearing. Should you have any questions or concerns, or wish to provide comments for DEP’s consideration, please contact John Wertam [<http://www.shipmangoodwin.com/jwertam/>] or DEP [http://www.ct.gov/dep/cwp/view.asp?A=2586&Q=476258&depNav_GID=1511] **before July 1, 2011** (the close of comment period).

A. Background

Under the current general permit, all construction activities disturbing a total of 5 acres or more must submit a registration to the DEP and prepare a Stormwater Pollution Control Plan (Plan) that addresses the erosion and sediment control and post-construction measures required in the general permit.

B. Proposed Changes

The proposed reissuance for the general permit contains many modifications to the provisions of the current general permit. Selected substantive changes are highlighted below. Please see the actual permit for changes [http://www.ct.gov/dep/lib/dep/public_notice_attachments/draft_permits/2011march30stormwateranddewateringwastewatersconstructiongeneralpermit.pdf].

1. New Procedure: Local Approval First, then (New): Review by the Connecticut Conservation District (“District”), then Application made DEP
 - a. *Issues:* Long approval timeline; District process untested and not currently staffed for such purpose; review time alone will take a **minimum** of 90 days, likely longer.
 - b. *Summary:* Locally approvable projects (projects that obtain a local land-use commission approvals) require that District staff conduct review of the project’s Pollution Control Plan (Plan) to determine if it is adequate. A “Letter of Affirmative Determination” from a District will be required before registering with the Department for general permit coverage.

*After July 1, DEP will be known as the Department of Energy and Environmental Protection, or “DEEP.”

2. DEP and Conservation District Fees

- a. *Issue:* More fees! Fee ranges from \$2,125 to over \$10,000!
- b. *Summary:* Locally approvable projects will have two fees. The District will charge a separate Plan review fee (payable to the District) that is on a sliding scale starting from \$1,500 and increasing depending on the size of the project. A registration fee of \$625 shall be paid to DEP.

3. Documentation of No Impact to Threatened and Endangered Species

- a. *Issue:* Significant potential delay in obtaining permit: pre-application process may take over one year to apply for permit!
- b. *Summary:* The general permit includes a detailed process and extensive guidance information to assess impacts to endangered/ threatened species from a proposed construction activity. This review must occur prior to submission of a registration form, and the registration form must include documentation supporting no impact as a result of the proposed activity.

4. Qualified Inspector

- a. *Issue:* Is district staff equipped to perform these inspections? Inspection required with detailed inspection schedule: once per week and within 24 hours of an event that generates a discharge.
- b. *Summary:* Once a project is authorized and has commenced, local District staff will inspect sites whose Plans they have reviewed to ensure proper implementation of control measures identified in the Plan. When the installation of the site drainage system and post-construction stormwater management measures is completed, District staff will perform a post-construction final inspection to confirm that the postconstruction management measures are installed as designed. Once all construction activity is completed and the site is fully stabilized, the permittee may submit a Notice of Termination to DEP to terminate permit coverage.

5. Post-Construction Performance Standards and Control Measures

- a. *Issue:* Low impact development (LID) appears optional, but is necessary to achieve performance standards. May add significant cost to projects. Must consider in original design phase before local approvals, or risk going back through the process again.
- b. *Summary:* The general permit proposes specific performance goals dependent on the nature and location of the activity for post construction discharges. LID measures are included as an "option" for achieving post-construction stormwater controls.

6. Significant Stormwater Management Plan Requirements and Impaired Water Requirements



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- a. *Issue:* Significant detail now required by the Plan, with added requirements for impaired waters.
- b. *Summary:* Under Section 303(d) of the Clean Water Act, EPA requires each state to identify waters that are “impaired” for a given use and identify, if possible, a pollutant(s) that is an indicator or cause of that impairment. DEP then conducts a study to determine the Total Maximum Daily Load (TMDL) of that pollutant that the waterbody is capable of assimilating. Discharges to this waterbody may then be restricted or prohibited if they cause an exceedance of this TMDL. The DEP has not yet completed a TMDL for all impaired waters. However, to address water quality impairments, the general permit outlines significantly more stringent requirements for discharges to impaired waters such as limiting the amount of disturbed area at any one time, reducing the length of time soil is disturbed and unstable, limiting the discharge frequency from the site, or providing compliance with an approved TMDL for the impaired waterbody. Additionally, these registrations also must be approved by DEP before the proposed activity is initiated.

7. Monitoring

- a. *Issues:* Additional cost and staffing to accomplish
 - Monthly monitoring of turbidity (no limits or bench marks)
 - Three grab samples
 - 24 hours following preceding storm even that generates a discharge
 - Submit a stormwater monitoring report within 30 days following the end of the month
- b. *Summary:* The permit will require monthly monitoring of turbidity of stormwater runoff from the construction site. Once a month during a rain storm, the permittee must collect at least 3 grab samples from each discharge point from the site. An average turbidity level will then be determined for each outfall and submitted to DEP on a Stormwater Monitoring Report form. If no rain storm occurs in a given month, sampling is not required.

Questions or Assistance?

If you have any questions or would like to have your comments made part of the public record, please contact John Wertam at jwertam@goodwin.com or the DEP by July 1, 2011.

NOTE: Contributions to information contained in this summary attributed to DEP’s summary on its website [http://www.ct.gov/dep/lib/dep/public_notice_attachments/general_permits/construction_general_permit_fact_sheet.pdf].

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