



MARYLAND DEPARTMENT OF THE ENVIRONMENT

Water and Science Administration
Wastewater Pollution Prevention and Reclamation Program
1800 Washington Boulevard, Suite 455
Baltimore, MD 21230-1708

Response to Public Comments

Regarding

General Permit for Discharges from Swimming Pools and Spas

State Discharge Permit Application No. 17-SI

NPDES Permit No. MDG76

Last Updated: August 31, 2022

Final: Sep 13, 2022

INTRODUCTION

The Department has been processing a reissuance of the State/NPDES (National Pollution Discharge Elimination System) General Permit for Discharges from Swimming Pools and Spas, State Permit Number 12SI (NPDES No. MDG76) as the new State Permit Number 17SI. The 17SI permit applies to discharges of wastewater from draining, drawdown, cleaning, filter backwash, overflow, splashout, and spraydown from swimming pools, spas, baptismal fonts, splash pads, water slides, and other similar facilities in the state of Maryland.

Notice of a tentative determination regarding this permit was published in various newspapers across the state during the weeks of June 24, 2022 and June 30, 2022 and again during the weeks July 1, 2022 and July 8, 2022. The notice was published in the Maryland Register on June 27, 2022. The Department held a public hearing regarding the tentative determination on August 3, 2022. Notice of the hearing was included in the aforementioned publications. The public comment period concluded on August 10, 2022. Substantive comments which were received during the public comment period, as well as the Department's responses to those comments, have been summarized in this document, below.

In the event of any inconsistencies between the factsheet and this document, this document shall take precedence.

SUMMARY OF CHANGES FROM THE TENTATIVE DETERMINATION DRAFT

1. The Department will not require submission of a Notice of Intent for facilities which discharge to groundwater only and which would not be subject to any numerical limitations. Instead, these facilities will be authorized under the permit without submission of a Notice of Intent – similar to how the Department regulates discharges from pools of private homeowners.
2. The Department has clarified that the requirements for the first 30 seconds of discharge of filter backwash wastewater. Such requirements were intended to apply solely to surface water discharges and the final permit makes this explicitly clear.

RESPONSES TO SPECIFIC COMMENTS

1. **COMMENT** (Rick Watts, DRD Pool Management, submitted via email 7/27/22)

There is a new proposed requirement to discharge at least 30 seconds from sand or Diatomaceous earth into sanitary sewer or a holding tank.

Does this apply to groundwater discharges as well as surface water discharges? The reason that many facilities discharge to groundwater or surface water is because they have no option to discharge into sanitary sewer due to high flow rates or construction that does not make it feasible to route to sanitary sewer.

Many facilities do not have the space to accommodate the addition of a holding tank because it was not a requirement when the original design of the facility was developed. Has consideration been given to the financial impact to owners to implement this new requirement, which may require extensive reconfiguration of plumbing and/or an addition to a filter room?

RESPONSE

The Department intended for the requirement to collect the first 30 seconds of filter backwash wastewater to apply solely to surface water discharges. Allowing such discharges to percolate into the groundwater will provide natural filtration and there is no applicable standard for suspended solids or turbidity for discharges to groundwater.

After review of the permit conditions for Discharge Category A in the tentative determination draft, the Department recognizes that the permit language is unclear. As stated in the fact sheet, the Department largely modeled the permit language regarding the first 30 seconds of filter backwash discharges from a similar general permit issued by the State of Michigan. The Michigan permit does not regulate any discharges to groundwater, so there was no need to address potential groundwater discharges in that permit. The Department overlooked the potential ambiguity caused by using the Michigan permit language as a guide in crafting its language for the 17-SI draft permit.

CHANGES FOR THE FINAL PERMIT

The final permit contains language which provides clarification that the requirements for the first 30 seconds of filter backwash are intended to apply only to dischargers to surface water.

The specific language included in the final permit is reprinted below (changes highlighted in aqua):

(Appendix A, Discharge Type C)

Narrative Conditions Specific to Surface Water Discharges of Filter Backwash

At least the first 30 seconds of backwash from a sand or diatomaceous earth filter **must** be directed to a sanitary sewer, **allowed to percolate into the ground (with no runoff to surface waters)**, or collected in a holding tank for settling prior to discharge (subject to the surface water limitations below). Following the first 30 seconds, it is highly recommended that you discharge to a grassy area or seepage pit which will allow for percolation of the wastewater into the ground. Note that you are not permitted to discharge the water in a manner such that it runs off onto a neighboring property without the permission of that property owner.

2. **TOPIC OF MULTIPLE COMMENTS: Discharges to Groundwater**

Rick Watts, DRD Pool Management, submitted via email 7/27/22:

As proposed, there are no reporting requirements for discharges to ground water if copper and silver are not used. Flow volume must be logged on site. If there are no discharges to surface water or storm (Discharge Type A, B, C, or D), does the facility need to have a discharge permit?

Rick Watts, DRD Pool Management, public hearing, 8/3/22:

For groundwater discharges where there are no reporting requirements, I would ask that you would consider not requiring the property owner to file for an actual permit. Reason being that if you are not discharging and you do not require a permit, you are still obligated to know what's in that permit as a property owner. The same thing would apply to those who are discharging to ground.

RESPONSE

In the State of Maryland, discharges to groundwater are regulated and may require a permit. However, the Department gave consideration to the proposal to regulate groundwater dischargers with no numerical permit limitations (no use of copper or silver containing additives) without requiring a Notice of Intent (NOI).

The Industrial and General Permits Division (I&GPD) consulted with the Groundwater Discharge Permits Division and Water and Science Administration (WSA) Compliance Program to determine if there were any significant concerns to relinquishing the requirement for submission of a Notice of Intent for such facilities. All parties agreed that there were minimal concerns with such dischargers. Swimming pool dischargers are all generally classified as lower concern relative to other discharge types. The discharges of pool wastewater to groundwater from “public” pools which are not subject to numerical limits is not considered much more significant of an environmental risk than discharges from “private” pools – and, in many cases, carry much less risk because the operators are trained in proper pollution prevention practices. It is also notable that these groundwater-only discharges, even if they are not required to submit a Notice of Intent, remain bound by state law, local requirements and regulatory requirements to minimize pollution. When required to submit an NOI, the permit has bounds for thresholds considered by the state as having reasonable potential significant enough that they additionally are bound by a permit. Therefore once subject to the permit the operator can be held liable for failing to adhere to them, and remain bound by any other applicable local or State regulations. Conversely the Department may always require pool operators to apply for permit coverage if their were information that led to a conclusion there was a reasonable potential. For instance in an area of Tier II waters.

Further, if facilities are not required to submit NOIs for groundwater-only discharges, they will be incentivized to explore ways to manage discharges such that they do not reach surface waters. The Department believes facilities discharging pool wastewater to groundwater are less of an environmental risk than those to surface waters. Providing an incentive to explore ways to prevent surface discharges is thus a potential benefit for the environment.

I&GPD also noted that “public” swimming pools, as defined in the permit, are generally required for regular inspections by local jurisdictions on an annual basis (at a minimum) for the purposes of demonstrating health and safety practices. During the previous permit term, the Department put forth specific efforts to reach out to local health departments to educate on the requirements of the SI general permit in an effort to spread awareness of the permit. Since SI general permittees are visited by MDE’s WSA Compliance staff at a lower frequency than other permits, educating local health inspectors assisted

in providing additional assurance that sites were complying with NPDES requirements, since the local inspectors were already required to visit these sites at least annually.

The Department has been very appreciative of the collaborative effort of local jurisdictions in this manner. In fact, to provide additional assistance for pool operators and the local inspectors, the Department created a Permit Exemption Form for sanitary sewer dischargers. This form is not mandatory per the SI permit nor should it be submitted to MDE, but rather it provides a simple option for pool operators to be able to document their awareness of NPDES requirements (the SI permit) and explain why it is not relevant to their operation. During the comment period, discussions with Mr. Watts (the lone formal commenter) indicated that a number of local jurisdictions are requiring pools to complete and post the Permit Exemption Form on site if they discharge to sanitary sewer.

The excellent assistance being provided by a number of local jurisdictions provides an additional layer of environmental protection if the Department ceases to require permit registrations for groundwater-only dischargers. Since we know local health inspectors will be visiting the sites, the Department feels this significantly lowers the likelihood that sites will falsely represent the nature of their discharges as a means to dodge registration and reporting requirements.

It is also notable that the permit fee for the SI general permit is only \$100 per NOI with no recurring annual fee, so (a) permittees have little financial incentive to falsely represent the nature of their discharges and (b) there is limited financial impact to the State caused by reducing the amount of fee-paying registrations.

Obviously, one significant concern with relinquishing the requirement for groundwater discharges to submit an NOI is that the Department would no longer have a means to track these specific facilities and would not conduct any routine inspections. The decision to eliminate the NOI requirement for such facilities largely centers on the concept of reasonable potential and the relative risk of relinquishing permit registration requirements versus the benefit of reallocating the time of permit writers and compliance inspectors to other projects. As discussed above, smaller swimming pool discharges that are properly managed are considered a relatively low risk to the environment. Allowing more time for other projects will provide additional bandwidth for the Department to investigate and scrutinize facilities with a greater potential to cause environmental harm. Also if a pool does create a concern due to size, it can always be required by the Department to apply for an individual permit or get coverage on a site by site basis.

As of August 25, 2022, there are 534 active registrations and 3 pending registrations under the 12SI general permit. Per the Notices of Intent submitted by those facilities, 67 are registered to discharge to groundwater only and do not use additives containing copper or silver. Elimination of the requirements for such facilities to submit an NOI would effectively reduce SI permit registrations by at least 12.5%.

If the Department does not require submission of NOIs for groundwater-only dischargers, facilities will also benefit from additional efforts to verify whether discharges actually reach surface water. This will increase the accuracy of registrations and may further reduce the number of 17-SI registrations (if groundwater-only discharges do not require NOI submission).

Overall, after considering all of the above factors, the I&GPD has determined it would best benefit the environment as a whole if the requirement for groundwater-only discharges, who do not use copper and silver, to submit a Notice of Intent were eliminated. The reasonable potential to pollute and the associated level of concern for such dischargers is already relatively low and such facilities are still going to be routinely visited by local health inspectors. There would be benefit in reallocating resources currently devoted to groundwater-only dischargers under the SI permit to other sites/discharges with

greater reasonable potential to pollute. The Department will continue outreach to local jurisdictions and offer specific educational opportunities regarding the new 17-SI permit shortly after issuance. Additionally, to assist permittees and local inspectors, the Department has created a form for groundwater-only discharges which will function similarly to the Permit Exemption Form for those discharging to sanitary sewer. The new form is added as Appendix D in the final permit.

Per 40 CFR §122.44(l), effluent limitations, standards, or conditions must be at least as stringent as the final effluent limitations, standards, or conditions in the previous permit. Elimination of the requirement to submit an NOI does not change the requirements for proper management of discharges nor the responsibility of every pool owner to adhere to state law, local requirements or regulatory requirements related to when a permit is required. It simply removes a requirement to register with the Department when there is no reasonable potential as determined by the state. Thus, this change avoids over regulation and is compliant with anti-backsliding requirements.

CHANGES FOR THE FINAL PERMIT

The final permit does not require submission of a Notice of Intent for facilities which discharge solely to groundwater unless they are subject to numerical limitations because they use pool additives containing copper or silver.

The specific language included in the final permit is reprinted below (changes highlighted in aqua):

(Part I.A)

A. Geographic Coverage

This permit covers discharges to surface or groundwater located within the territorial boundaries of the state of Maryland.

(Footnote)

Discharges to groundwater which do not require numerical limitations or reporting via NetDMR are not required to submit a Notice of Intent for coverage under this permit. See Part III.A of this permit for additional details.

(Part III.A)

A. Facilities Authorized Without Submitting a Notice of Intent

If your facility fits the definition found in Appendix B of a “private” pool, spa, baptismal font, or similar facility (as identified in Part I.B), you do not need to submit a Notice of Intent for registration to discharge wastewater covered under this general permit.

If your facility discharges all wastewater of Discharge Types A, B, and C to the sanitary sewer, you are not required to submit a Notice of Intent for the sole discharge of wastewater under Discharge Type D (as specified in Appendix A).

If your facility discharges all wastewater of Discharge Types A, B, and C to groundwater, but you do not use additives containing copper or silver (and you would thus not be subject to numerical monitoring or reporting via NetDMR), you are not required to submit a Notice of Intent for registration to discharge wastewater covered under this general permit, unless notified by the

State to do so. Before concluding that your discharge solely occurs to groundwater, you should review Part III.D.2 of this permit. Any existing permittees which discharge solely to groundwater and, per this paragraph, will no longer require a permit registration should continue reporting under the 12-SI until they have requested and received written notice that existing permit coverage has been terminated OR until the four-month deadline for renewals has passed (per Part II.B of this permit), upon which the existing registrations who have not renewed will be terminated.

For all facilities which are not required to submit a Notice of Intent, as outlined above in this section, you are automatically authorized to discharge in compliance with the requirements of this permit. You remain subject to the terms of this permit and are responsible for being aware of the effluent limitations, both narrative and numerical, and ensuring that your discharges meet all applicable limitations, but are not required to register with the Department or submit any monitoring results or other required submittals to the Department. You should, however, be prepared to demonstrate that you have not discharged in violation of the terms of this permit, should the Department or other responsible party ask you to do so.

Dischargers to groundwater which are not required to submit a Notice of Intent, as outlined above in this section, are encouraged to complete the "17-SI Groundwater NOI Exemption Form" (see Appendix D) and maintain the form on site to provide a means for you to demonstrate your awareness of this permit and explain why submission of an NOI is not required. Completion of the "17-SI Groundwater NOI Exemption Form" is not required for compliance with this permit and completed forms shall not be submitted to MDE; however, displaying a completed form may be useful during inspections from your local authorities.

(Appendix A, Discharge Types A, B, and C)

Discharges to Groundwater:

See Part III.D.2 before you select groundwater as the sole receiving waters.

Groundwater discharges are not subject to submission of a Notice of Intent or numerical limitations or reporting, unless you are using pool additives containing copper or silver.

If you are not using copper or silver additives, and thus not required to submit a Notice of Intent, you are still required to adhere to all narrative conditions of this permit applicable to your type of discharges. See Part III.A of this permit. It is highly recommended that you maintain a log of discharge events from your site including estimates of discharge volume.

(Appendix D)

A new optional "17-SI Groundwater NOI Exemption Form" has been created and included as new Appendix D.