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## **Stronger protections urged for DEP general permit for construction activities**

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West Virginia Gov. Jim Justice, flanked on his left by Department of Transportation Secretary Jimmy Wriston, shovels ceremonial dirt during a groundbreaking event in Tucker County for a section of Corridor H from Kerens to Parsons in this June photo. A lack of public notice for general construction stormwater permitting for core drilling for Corridor H has drawn criticism from environmental and community advocates.

Courtesy photo

West Virginia conservationists say a general permit the state issues for construction projects doesn't adequately protect water quality or provide sufficient public notice of proposed pollution impacts.

Conservationists urged greater safeguards and transparency in that permit the Department of Environmental Protection plans to renew during a public hearing last week.

"We believe that more steps are needed," West Virginia Rivers Coalition staff scientist Jenna Dodson said during the virtual hearing the DEP hosted Jan. 29.

The permit the DEP has [proposed to renew](#) for five years is a general construction stormwater permit that broadly allows discharges to surface waters for land disturbance during development of residential, commercial or industrial sites.

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## Key DEP water pollution control permit up for renewal, public comment

### **Calls for stronger water pollution protections**

The DEP plans no significant changes to the water pollution control permit from when it was last approved in 2019.

Conservationists take issue with that, saying the tool the DEP uses to avoid having to issue individual permits needs to be sharper.

Dodson urged the permit be revised to require enhanced water pollution mitigation practices for projects discharging into Tier 1 streams, referring to the state's category of waters with the least stringent protection requirements. Tier 1 nevertheless includes waterbodies listed as impaired on the state's list of impaired waters.

"This is really because erosion and sedimentation impacts from construction activities are one of the top threats to water quality in the state regardless of the designation of the waterway," Dodson said.

The DEP has acknowledged the high environmental stakes of the permit.

The DEP said sediment is the number one pollutant in the state's waters and moderately to heavily impacts approximately 70% of the state's waterways in a [fact sheet](#) it released on the [proposed permit reissuance](#).

A lack of vegetation, steepening of slopes, increased runoff, decreased infiltration and other construction impacts can cause a 1,000-fold increase in the rate of erosion, the agency said.

The DEP issued 3,079 new construction stormwater permits from July 2015 to December 2020, according to its most recent water quality monitoring and assessment report. DEP records show an average of roughly 600 construction projects each year from 2019 through 2023, according to the agency.

Christine Wimer of the Jefferson County Foundation, an Eastern Panhandle-based sustainable development and environmental protection nonprofit, called for the permit to require enhanced water pollution mitigation practices in all areas of karst topography, regardless of the tier of the receiving waterway.

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Karst landscapes are characterized by sinkholes, sinking streams, caves and springs formed by dissolving bedrock. Aquifers in karst areas are especially vulnerable to contamination. Karst terrain is prevalent in Eastern West Virginia.

Wimer urged requirements for karst mitigation be included in the permit, calling for mandated monitoring to determine whether stormwater is entering a sinkhole, reporting of sinkholes to the DEP spill line and remediation under an individual project karst mitigation plan.

Alan Lehman of Shenandoah Riverkeeper within the Potomac Riverkeeper Network, a Potomac and Shenandoah watershed protection group, suggested turbidity monitoring be required for large construction projects, echoing a request from Dodson.

“It’s certainly the least that could be expected,” Lehman said.

Turbidity is the clarity of water and a key factor in water quality.

Dodson said the Rivers Coalition recommends the DEP require turbidity monitoring for large construction projects, projects lasting over a year and projects discharging to streams in Tier 3, the state's highest tier of protection for waterbodies.

### **'We want public notice'**

Most of the hearing's six speakers urged the DEP to require public notice advertisements for all permit applications. None of the speakers contended the permit would be too onerous for permittees.

"We believe that members of the public have a right to know and an opportunity to participate in permitting processes of construction projects that will affect their local water resources as well as any proposed modifications of those projects," Dodson said.

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The proposed permit requires public notice only for projects that meet certain criteria.

The DEP drew the ire of critics of the state's planned route for the Corridor H highway in Tucker County by citing the general permit as the basis for its lack of public notice of a permit it granted in May advancing the project.

"We want public notice. We want that in local papers, and we want that for all projects," Judy Rodd, director of Friends of Blackwater, told the DEP during the hearing.

Friends of Blackwater is a Blackwater Canyon preservation group opposed to the state's planned route for a 10-mile stretch of Corridor H between Parsons and Davis in Tucker County. The group says the planned route would exacerbate acid mine drainage, degrade the Blackwater Falls State Park experience and potentially threaten road safety near Tucker County High School. Friends of Blackwater has opposed core drilling for Corridor H.

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## Key DEP water pollution control permit up for renewal, public comment

DEP approval of a general stormwater construction permit allowed 38 acres of disturbance for core drilling to assess geological conditions for Corridor H for permittee Greenman-Pedersen Inc., a national firm that operates in Putnam County.

The DEP said the permit didn't require public notice because of a provision in the state's general stormwater construction permit indicating applications are subject to public notice in a local newspaper if:

- They propose land disturbance of 100 or more acres.
- Are projects of 3 acres or more with a grading phase of one year or longer which won't achieve final stabilization by the end of the year.
- Are projects discharging to Tier 3 streams.

Agency spokesman Terry Fletcher said that since the Greenman-Pedersen water pollution control permit application didn't meet those criteria, it wasn't subject to any public notice requirements.

The general permit and draft permit to replace it both allow the DEP's Division of Water and Waste Management director to reserve the right to require advertisement for any other type of application.

Opponents of the state's planned Corridor H route have pointed to [federal environmental code](#) applicable to Clean Water Act-enabled state water pollution control programs requiring draft permits to be publicly noticed and made available for comment.

"Really, I think you could do better on public notice, and that's our main comment here," Rodd said.

## EPA: DEP water assessment methodology is outdated

The general stormwater construction permit isn't the only water quality front on which West Virginia environmentalists have been fighting for stronger DEP oversight.

Environmentalists have pointed to a United States Environmental Protection Agency renewal last year of a past finding that the DEP has persisted for years in [using an outdated methodology](#) for assessing biological conditions in West Virginia's waters.

The EPA identified over 1,600 miles of waterways throughout the state the agency says should be added to a DEP list of waters for which pollution controls aren't enough to meet state water quality standards.

In June, the EPA partially disapproved West Virginia's list of those waters, finding the DEP failed to provide a "technical, science-based rationale for not using existing and readily available data and information" in developing its Section 303(d) list of waters. The list is named after the section of the federal Clean Water Act authorizing the EPA to help states list impaired waters.

The EPA has said the DEP should use genus-level biological data to identify water impairments rather than relying on family-level data. Referring to a group of closely related species, genus falls below family in taxonomic rank, making it a more precise basis for assessments.

In October comments submitted to the EPA, the DEP said it uses genus-level identification as an "additional line of evidence" in assessments to validate impairment decisions. But the DEP defended its use of family-level data for 303(d) listing decisions and determinations of water pollution control permit compliance, accusing the EPA of "naked overreach into the realm of decision-making" it argued was explicitly reserved for states.

Conservationists hope the DEP decides in favor of tighter stormwater construction permit provisions given the state's many impaired waters — regardless of what tier of degradation they may fall in.

"[T]his is our time," Lehman said. "And this is your chance to get it right for a healthy future."

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## Corridor H concern intensifies with environmental approvals in limbo

Corridor H drilling permit legality questioned, environmental impact feared

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