



GEORGIA

DEPARTMENT OF NATURAL RESOURCES

ENVIRONMENTAL PROTECTION DIVISION

Richard E. Dunn, Director

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April 7, 2020

MEMORANDUM

To: Richard E. Dunn, Director
Environmental Protection Division

From: James A. Capp, Chief
Watershed Protection Branch

Subject: Responses to Comments Received During the Public Comment Period Regarding
Proposed Amendments to Rules for Water Quality Control, Chapter 391-3-6

On February 28, 2020, EPD issued a public notice requesting comments on proposed amendments to the Rules for Water Quality Control, Chapter 391-3-6. A public hearing was held at 1:00 p.m. on March 27, 2020, in the EPD Training Center located at 4244 International Parkway, Suite 116, Atlanta, Georgia 30354. Due to concerns regarding COVID-19 and to encourage social distancing, the public hearing was also held using Zoom, a free web conferencing platform that also allows participation by phone. A subsequent notice to provide details and access information for the Zoom conference platform was issued on March 20, 2020. The public comment period ended on March 30, 2020.

Public comments were received from three organizations during the comment period: the Georgia Industry Environmental Coalition, the Georgia Chamber of Commerce, and the Georgia Water Coalition.

A summary of the comments received and EPD's responses to the comments is attached. No changes to the proposed rule amendments are recommended as a result of comments received, although one clerical error is being corrected, as noted in the response to comment 3.

Responses to Comments Received During the Public Comment Period
February 28 – March 30, 2020
Regarding Proposed Amendments to Rules for Water Quality Control, Chapter 391-3-6

1) Comment: The Georgia Industry Environmental Coalition (GIEC) and the Georgia Chamber of Commerce (Chamber) expressed support for the proposed rule amendments. The GIEC stated that the proposed rule amendments eliminate historic public notice procedures that are now best performed electronically, should increase efficiency for both permittees and EPD, and would serve as a better method for providing public awareness of EPD's permitting actions. The Chamber noted that the proposed rule amendments were a good initiative using technology to increase efficiency and enhance transparency, particularly for people in remote or rural parts of Georgia. The Georgia Water Coalition (GWC) supported the posting of draft permits and related materials online, as well as the use of email notifications of draft permits. GWC also supported the continuation of newspaper publication for pretreatment program-related notices under Rule 391-3-6-.09.

Response: Comments noted.

2) Comment: The GWC opposed removal of the requirements for posting public notices in local newspapers or on local bulletin boards, noting that approximately 1.6 million Georgians lack internet access and may rely on newspapers and public buildings for permitting-related notices. The commenter also stated that EPD and the permit applicants should continue to pay the costs for such postings, and that the public comment period should not begin to run until the applicant proves that such notice has been provided.

Response: EPD strongly believes that the website posting and email notification procedures incorporated in the proposed rule amendments will enable the agency to reach a broader audience in a more cost-effective manner utilizing web-based and email notifications that are available to the vast majority of our state's citizens via a computer and/or smartphone. The GWC relies upon the 2019 Georgia Broadband Plan for its claim that approximately 1.6 million Georgians lack internet access, however, this is misleading. The Georgia Broadband Plan doesn't report the number of Georgians that lack internet access. Instead, it refers to the number of people lacking high-speed (or broadband) internet, which is defined as 25 Mbps download and 3 Mbps upload (25/3). The public would not need high-speed internet in order to receive an email message or to access files posted to EPD's website. Any computer internet connection or smartphone with cellular service should be sufficient to view EPD's public notices.

The proposed rule amendments will also save the agency significant costs and will also save permittees the time and expense of newspaper publications that in some instances may be significant to them. EPD currently publishes notices regarding the renewal and issuance of general NPDES permits in five major newspapers in the state, at a cost of approximately \$1,800 per instance, and the combined costs of administrative staff time and mailing fees for mailing out wastewater permit notices is approximately \$550 per month. Furthermore, EPD believes that the cost savings to EPD and permit applicants is more than justified by the expected improvements to the timeliness and efficiency of reaching the public through website postings and email notifications. Tying the commencement of the public comment period to the permit applicant's confirmation of a newspaper posting, as the GWC recommends, demonstrates the relative inefficiency of relying on non-electronic methods of communication for the public notice process.

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3) Comment: The GWC noted an incorrect citation to the Code of Federal Regulations in the proposed rule amendments, which was written as “C.F.B.” instead of “C.F.R.” in proposed Rule 391-3-6-.26(2)(b).

Response: EPD appreciates the GWC pointing out this typographical error, which has now been corrected in the proposed rule amendments.

4) Comment: The GWC suggested that the language in the proposed rule amendments be strengthened to state that copies of the various materials associated with the public notice (permit applications, fact sheets, draft permits, written comments, etc.) “shall” be available online. The language in this proposed rule amendments only states that such materials “may” be available online. *See* Rules 391-3-6-.09(5)(c)(1), and 391-3-6-.26(4)(a). The commenter also urged EPD to keep these materials online until a final permitting decision has been made.

Response: The language used in the proposed amendments to Rules 391-3-6-.09(5)(c)(1) and 391-3-6-.26(4)(a) is based directly upon language from EPA’s updates to the federal regulations under 40 CFR 124.10 (84 FR 3324). In their preamble, EPA notes they are requiring posting of the draft permit and fact sheet on the permitting authority’s website for the duration of the public comment period, but that they are not requiring the permitting authority to additionally post the final permit, fact sheet and response to comments on their website for the entire term of the permit. The proposed rule amendments therefore do not state that EPD “shall” make all of these materials available online. In practice, EPD intends to make materials other than the draft permit and fact sheet available on our website. Once such materials are posted to the EPD website, they should remain online and be available until a final permitting decision has been made. In addition, the final permit package (summary, response to comments, final permit, fact sheet) will also be available on the EPD website after the final permit issuance.

5) Comment: The GWC suggested that the language in the proposed rule amendments be revised to require the EPD Director and EPA Regional Administrator to agree that the information requested to be kept confidential by a permit applicant actually meets the legal definition of “confidential business information” under state or federal law in order for that information to be treated as such, and asserted that under the proposed rule language, either the Director or Regional Administrator could treat information as confidential without any legal justification. *See* Rules 391-3-6-.09(5)(c)(2), and 391-3-6-.26(4)(b).

Response: EPD disagrees with the commenter that the proposed rule language would enable the Director or Regional Administrator to treat information as confidential without any legal justification. The proposed rule amendments require the permit applicant to clearly label any information that it asserts is confidential and provide a supporting statement as to the reason that such information should be considered confidential. The Director may then only label and handle such information as confidential after the Director determines that such information is entitled to confidential protection and has the concurrence of the Regional Administrator in that determination. Neither the Director nor the Regional Administrator would make such a determination without the appropriate legal justification.

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6) Comment: The GWC suggested that the EPD go further in the proposed rule amendments by requiring that all permit applications be posted online within three business days of receipt, and that all final permits be posted online and the final permitting decisions be emailed to those on EPD's email subscriber list.

Response: EPD does not intend to include these suggested additions to the proposed rule amendments, as they go beyond what is required by the federal regulations and would impose additional burdens upon staff time and agency resources. In practice, permit applications are received electronically or received via hard copy and uploaded to the GEOS portal upon receipt. As such, the permit applications are available for review online by the public upon EPD receipt or within a couple of business days. Currently, the Watershed Protection Branch maintains a "Permit and Public Comments Clearinghouse" on the EPD website, where the Branch posts all permits issued in which public comments were received as part of the permit development process. On that site, final permits are posted within about 2 business days of being issued by the EPD Director. The site also includes a posting of all comments received on draft permits, as well as EPD's responses to those comments.

7) Comment: The GWC requested that proposed Rule 391-3-6-.13(a)(7) be revised to apply the notice and public participation procedures of proposed Rule 391-3-6-.26 to Class V wells, in addition to Class I, II and III wells. Alternatively, the GWC suggested that EPD revise the rules to establish a procedure for imposing notice and comment requirements for individual Class V well permit applications if certain conditions are met, such as proximity to neighbors, schools or streams. The GWC asserted that there are numerous types of wells that could qualify as Class V wells, and it would be helpful for the public to understand what types of materials could be injected underground and have an opportunity to raise questions or voice concerns.

Response:

EPD does not intend to include these suggested additions to the proposed rule amendments, as they go beyond what is required by the federal regulations and would impose additional burdens upon staff time, agency resources, and prolong the permitting process for a classification of wells that have minimal environmental impact or are co-regulated with other federal or state regulations. As defined in Rule 391-3-6.13(3)(e) Class V wells consists of all injection wells not included in Classes I, II, III, or IV. Typically, Class V wells are shallow wells used to place a variety of fluids directly below the land surface. Class V wells currently permitted in GA include the injection of fluids for the remediation of contaminated groundwater and septic systems used to inject the effluent from a multiple dwelling business establishment, community or regional business establishment septic system and have the capacity to serve fewer than 20 persons a day. Prolonging the permitting process for a remediation project could potentially allow contaminated groundwater to further migrate and result in additional environmental deterioration. Additionally, Class V permit applications are publicly available online upon receipt by EPD allowing the public an opportunity to review the applications.

