

Home Builders & Remodelers Association of Connecticut
**Public Act 12-172 (House Bill 5344) – An Act Concerning Streamlining the
State’s Stormwater General Permitting Process**

(June 15, 2012)

Summary: Effective June 15, 2012, PA 12-172 streamlines the lengthy and expensive DEEP stormwater (SW) permit process without changing any substantive requirement for controlling SW runoff. The new law also applies to all of DEEP’s wastewater general permit programs. It allows “qualified professionals” – to be defined within each of DEEP’s wastewater permits – to certify to DEEP that all permit requirements are met. Checks and balances are built in to protect the integrity of certified control plans and allowing DEEP to audit submissions.

More Detail: DEEP regulates SW runoff (and other wastewater discharges) through several permits, which are in addition to local government regulations requiring soil erosion and sediment controls. DEEP’s SW requirements are extensive to ensure the protection of our waters, which is not the issue addressed by PA 12-172. The issue addressed is the *permit review process*, which can be lengthy and expensive for permit applicants (i.e., registrants) and the agency itself. The new process for registering for a general permit, and its benefits, follows:

PA 12-172 allows “qualified professionals” to certify to DEEP that all permit requirements are met. The agency must accept these certifications, thereby avoiding a potentially lengthy agency review. While DEEP must accept the certification, the process has checks and balances to ensure the integrity of the certifications and is subject to strong enforcement tools to ensure SW permit registrations comply with the regulations. After submitting a certified permit registration, the registrant must wait only for a 30-day public notice and comment period, mandated under the federal Clean Water Act.

Qualified Professionals will be strictly defined in DEEP’s general permits. No new license is required for qualified professionals, nor are they placed on a list at DEEP. If you meet the definition, you can certify to permit compliance.

The agency’s new (draft) construction SW general permit is the first to include a qualified professional definition – you must be a licensed engineer or licensed landscape architect and have 6-8 years of experience doing SW control work.¹ Qualified professionals require certain experience because the certification is *in lieu of DEEP or outside Soil Conservation District review* of stormwater plans. Everyone wants to make sure that people doing this work are competent to do it right. Lesser experienced professionals can still work on SW plans; they just cannot certify to DEEP.

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¹ If a permit registrant does not want to use a Qualified Professional to certify permit compliance, the draft construction SW general permit allows an alternative track for compliance by obtaining approval of SW control plans from a Soil Conservation District, which have signed a Memorandum of Agreement with DEEP.

The legislation does not authorize anyone to do work without a license if such work requires a license. Stormwater controls are divided between engineered systems, which only a licensed professional engineer can do (culverts, drainage basins, etc.), and non-engineered systems (hay bales, silt fencing, rain gardens), which all qualified stormwater professionals can do. So, any engineered SW system can be done ONLY by licensed professional engineers.

DEEP will audit certifications and enforce compliance to ensure integrity of the program and correct any materially inaccurate, incomplete or misleading certifications. The legislation sets a goal of auditing 10% of all certified plan submissions.

Municipal soil erosion and sediment control regulations are not affected by PA 12-172.

The effective date of PA 12-172 is June 15, 2012, the date the Governor signed the bill.

A copy of PA 12-172 is attached (underlined language is new language added to the law; [bracketed language] is language deleted from the law):

Public Act No. 12-172

Substitute House Bill No. 5344

AN ACT CONCERNING STREAMLINING THE STATE'S STORMWATER GENERAL PERMITTING PROCESS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 22a-430b of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) (1) The Commissioner of Energy and Environmental Protection may issue a general permit for a category or categories of discharges regulated pursuant to section 22a-430, except for a discharge covered by an individual permit. The general permit may regulate, within a geographical area: [(1)] (A) A category of discharges which involve the same or substantially similar types of operations, involve the same type of wastes, require the same effluent limitations, operating conditions or standards, and require the same or similar monitoring and which in the opinion of the commissioner are more appropriately controlled under a general permit; [(2)] (B) stormwater discharges; or [(3)] (C) a category of discharges not requiring a permit under the federal Water Pollution Control Act. Any person or municipality conducting an activity covered by a general permit shall not be required to apply for or obtain an individual permit pursuant to section 22a-430, except as provided in subsection (c) of this section. The general permit may require that any person or municipality initiating, creating, originating or maintaining any discharge into the waters of the state under the general permit shall register such discharge with the commissioner before the general permit becomes effective as to such discharge. Registration shall be on a form prescribed by the commissioner.

(2) When issuing a general permit pursuant to this section, the commissioner may require the submission of a certification made by a qualified professional. Any general permit requiring such certification shall specify: (A) The qualifications necessary to define a qualified professional. Such qualifications may include education, training, experience or the attainment of a credential or license that such qualified professional must have obtained. If such qualifications do not require a license, the commissioner shall describe the rationale for such qualifications in a publicly available fact sheet or similar document when proposing the issuance of the applicable general permit pursuant to subsection (b) of this section; (B) the criteria to ensure that a qualified professional is independent and does not have a conflict of interest in making a certification, provided reasonable compensation for services rendered in making a certification shall not be deemed a conflict of interest; (C) the information to be reviewed or inspections to be conducted by such qualified professional as a basis for making a certification; (D) documents that shall be retained in connection with a

certification; (E) the standards or requirements for an activity or project that a qualified professional must affirmatively determine have been met; (F) the terms of a statement to be signed by such qualified professional, including any conditions necessary for providing such statement; (G) any other information or condition deemed necessary by the commissioner regarding a certification; and (H) whether the submission of a certification shall be required when the person seeking coverage under the general permit is a governmental entity, including a federal, state or municipal entity. Nothing in this section shall authorize a qualified professional to engage in any profession or occupation requiring a license under any other provision of the general statutes without such license. The commissioner shall not require such certification if such certification would violate the federal Water Pollution Control Act or the federal Safe Drinking Water Act.

(b) Notwithstanding the provisions of chapter 54, a general permit shall be issued, renewed, modified, revoked or suspended in accordance with the standards and procedures specified for an individual permit, in accordance with section 22a-430 and any regulations adopted thereunder, except that (1) summary suspension may be ordered in accordance with subsection (c) of section 4-182; (2) any proposed or final general permit and notice thereof may address persons or municipalities which are or may be covered by the general permit as a group, describe the facilities which are or may be covered by the general permit in general terms; and (3) upon issuance of a proposed or final general permit, the commissioner shall publish notice thereof in a newspaper of substantial circulation in the affected area. General permits shall be issued for a term specified by the permit and such terms shall be consistent with the federal Water Pollution Control Act and shall be subject to the provisions of section 22a-431. Such permits shall: [(1)] (A) Describe the category of discharge regulated by the general permit; [(2)] (B) specify the manner, nature and volume of discharge; [(3)] (C) require proper operation and maintenance of any pollution abatement facility required by such permit; and [(4)] (D) be subject to such other requirements and restriction as the commissioner deems necessary to fully comply with the purposes of this chapter, the federal Water Pollution Control Act and the federal Safe Drinking Water Act. Any construction or modification of a pollution abatement facility or disposal system which is undertaken pursuant to and in accordance with a general permit shall not require submission of plans and specifications to or approval by the commissioner, unless required pursuant to the terms of the general permit.

(c) Subsequent to the issuance of a general permit, the commissioner may require a person or municipality initiating, creating, originating or maintaining any discharge which is or may be authorized by a general permit to obtain an individual permit pursuant to section 22a-430 if the commissioner determines that an individual permit would better protect the waters of the state from pollution. The commissioner may require an individual permit under this subsection in cases [including.] that include but are not limited to the following: (1) When the discharger is not in compliance with the conditions in the general permit; (2) when a change has occurred in the availability of a demonstrated technology or practice for the control or abatement of pollution

applicable to the discharge; (3) when effluent limitations and conditions are promulgated by the United States Environmental Protection Agency or established by the commissioner under section 22a-430 for discharges covered by the general permit; (4) when a water quality management plan containing requirements applicable to such discharges is approved by the United States Environmental Protection Agency; (5) when circumstances have changed since the issuance of the general permit so that the discharger is no longer appropriately controlled under the general permit, or a temporary or permanent reduction or elimination of the authorized discharge is necessary; (6) when the discharge is a significant contributor of pollution, provided [that] the commissioner, in making this determination, [the commissioner] may consider the location of the discharge with respect to waters of the state, the size of the discharge, the quantity and nature of the pollution discharged to waters of the state, cumulative impacts of discharges covered by the general permit and other relevant factors; or (7) when the requirements of subsection (a) of this section are not met. The commissioner may require an individual permit under this subsection only if the affected person or municipality has been notified in writing that a permit application is required. The notice shall include a brief statement of the reasons for the commissioner's decision, an application form, a statement setting forth a time for the person or municipality to file the application, and a statement that on the effective date of the individual permit the general permit as it applies to the individual permittee shall automatically terminate. The commissioner may grant additional time upon the request of the applicant. If the affected person or municipality does not submit a complete application for an individual permit within the time frame set forth in the commissioner's notice or as extended by the commissioner in writing, then the general permit as it applies to the affected person or municipality shall automatically terminate. Any interested person or municipality may petition the commissioner to take action under this subsection.

(d) (1) A qualified professional shall ensure that any certification submitted pursuant to this section complies with the general permit that requires such certification. Compliance with a general permit shall include any matter specified in such permit pursuant to subdivision (2) of subsection (a) of this section. The commissioner shall accept a certification when submitted with a registration for a general permit, unless (A) the certification is the subject of an audit pursuant to subsection (e) of this subsection; or (B) the commissioner has reason to believe that the certification does not comply with the requirements of the general permit, including any matter specified in the general permit pursuant to subdivision (2) of subsection (a) of this section.

(2) Any qualified professional who makes a certification pursuant to this section shall promptly notify, in writing, the commissioner and the person who would obtain or has obtained coverage under the general permit based upon such certification if, during the normal course of a qualified professional's practice, such professional learns, or should have learned, of information that would significantly affect or prevent such professional's decision to have made such certification. Such notification shall be made not later than fifteen days after a qualified professional learns of such information and

shall identify the certification and the reasons such qualified professional is submitting notice pursuant to this subdivision.

(e) The commissioner may audit any certification made by a qualified professional pursuant to this section. As part of such audit, the commissioner may request any information the commissioner deems necessary to conduct such audit from either the person who would obtain or has obtained coverage under the general permit based upon such certification or the qualified professional making the certification. In addition, the commissioner may require independent verification of all or any part of a certification made by a qualified professional. Such independent verification shall be performed by a different qualified professional who: (1) Meets the requirements for a qualified professional specified in the general permit; (2) does not have a conflict of interest, provided reasonable compensation for providing independent verification shall not constitute a conflict of interest; (3) did not engage in any activities associated with the development, preparation or review of any information on which the certification is based; and (4) is not under the same employ of the person who developed, prepared or reviewed any of the information on which the certification is based. Such independent verification shall be at the expense of the person who seeks or has obtained coverage under a general permit. If an audit undertaken by the commissioner pursuant to this subsection reveals that a certification was made in violation of any requirement of the general permit, including any matter specified in the general permit pursuant to subdivision (2) of subsection (a) of this section, the commissioner may charge, and the person who would obtain or has obtained coverage under the general permit based upon such certification shall pay, for the reasonable costs of conducting such audit.

(f) The commissioner shall have a goal of auditing ten per cent of the certifications submitted with a general permit pursuant to this section. The commissioner shall, not later than January 1, 2014, submit a report, in accordance with the provisions of section 11-4a, to the joint standing committees of the General Assembly having cognizance of matters relating to commerce and the environment. Such report shall include (1) the total number of certifications submitted; (2) the number of certifications subject to partial or full audit; (3) the number of certifications found not to be in compliance with the general permit; (4) where necessary, the actions taken to bring about or maintain compliance with the general permit; (5) whether any conclusions can be drawn from the audits regarding levels of compliance of the certification with applicable requirements and, if so, any such conclusions; and (6) any additional recommendations regarding the use of certifications in general permits. Such report may be submitted electronically.

(g) Notwithstanding the acceptance of a certification pursuant to the provisions of subdivision (1) of subsection (e) of this section, if, after acceptance, the commissioner finds that a certification does not comply with the requirements of the general permit, including any matter specified in the general permit pursuant to subdivision (2) of subsection (a) of this section, or if the qualified professional that made a certification fails to cooperate or provide information requested by the commissioner pursuant to

subsection (e) of this section, the commissioner may (1) deny a registration seeking coverage under a general permit, (2) revoke, suspend or modify any approval issued by the commissioner under a general permit, including the approval of any registration for coverage under a general permit, or (3) require the person who would obtain or has obtained coverage under the general permit based upon such certification to obtain an individual permit, pursuant to subsection (c) of this section. The commissioner may take such action even if the person who would obtain or has obtained coverage under the general permit based upon such certification had no involvement in the development, preparation or review of the certification submitted pursuant to this section, or any of the information on which a certification was based, or was unaware that the certification was not in compliance with the requirements of the general permit, including any matter specified in the general permit pursuant to subdivision (2) of subsection (a) of this section. In addition to any other penalty or sanction provided for by law, disciplinary action may be taken against a qualified professional for a certification that does not comply with the requirements of a general permit, including any matter specified in the general permit pursuant to subdivision (2) of subsection (a) of this section. For any qualified professional required to maintain in effect a license or credential under any provision of law, the commissioner may (A) make a referral for disciplinary action against such qualified professional to any board, commission or department overseeing such professional; (B) issue a reprimand or warning to such qualified professional; or (C) prohibit, either temporarily or permanently, such professional from making a certification submitted pursuant to this section.

[(d)] (h) The commissioner may adopt regulations in accordance with the provisions of chapter 54 to carry out the purposes of this section.