



# **Responsiveness Summary**

**For**

**Public Comments Received**

**On the**

NEW YORK STATE

DEPARTMENT OF ENVIRONMENTAL CONSERVATION

SPDES GENERAL PERMIT

FOR STORMWATER DISCHARGES

from

**CONSTRUCTION ACTIVITY**

Permit No. GP-0-20-001

Date January 2020

Issued Pursuant to Article 17, Titles 7, 8 and Article 70

of the Environmental Conservation Law

## **Introduction**

The New York State Department of Environmental Conservation (Department) prepared this responsiveness summary to address the comments that were timely received on the draft State Pollutant Discharge Elimination System (SPDES) General Permit for Stormwater Discharges from Construction Activity, GP-0-20-001.

The draft general permit was published for public review and comment in the Environmental Notice Bulletin (ENB) on July 24, 2019. The notice was also published, on either July 30, 2019 or July 31, 2019, in the following newspapers: New York Post, News Day, Albany Times Union, Buffalo News, Syracuse Post, Binghamton Press, Glens Falls Post Star, Poughkeepsie Journal, Rochester Democrat, Watertown Daily Times and Plattsburgh Press Republican. The comment period closed on August 30, 2019.

The responsiveness summary generally addresses all comments timely received, with the exception of comments dealing with editorial or formatting changes. The comments have been organized to follow the format of the draft general permit with general comments addressed at the end of the responsiveness summary.

## **Commenters**

Eileen O'Connor, Cayuga County Health Department (CCHD)

Adam Effler, Owasco Lake Watershed Management Council (OLWMC)

Tracy Miller, National Grid (NG)

Virginia Wong, EPA Region 2 (EPA)

Rachel Ramirez-Guest, City of New York Law Department (NYC)

Philip Bein, Watershed Inspector General, Office of the Inspector General (WIG)

Terence Smith, Director Environmental Services Bureau, NYS DOT (NYS DOT)

Krista Greer, JM Davidson Engineering ((JMDE)

**Part I. PERMIT COVERAGE AND LIMITATIONS****A. Permit Application**

**Comment 1: The definition of Routine Maintenance Activity in the current SPDES permit GP-0-15-002 Appendix A – Definitions includes “stream bank restoration projects (does not include the placement of spoil material)” in the list of activities. The draft permit GP-0- 20-001 has removed this activity. Though not routine maintenance, emergency response streambank restoration that is necessary to address public health and safety in the aftermath of major storm events typically requires a rapid response (e.g., within 24 hours). Submitting a Notice of Intent for permit coverage and waiting five (5) business days for authorization would further put public health and safety or lives at risk.**

**Routine maintenance and emergency restoration activities disturbing one or more acres of soil and located in or affecting navigable waters are subject to the maintenance and emergency and storm recovery requirements of the State Programmatic General Permit under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act apply.**

**Please modify Part I.A.1. to: “Construction activities involving soil disturbances of one (1) or more acres; including disturbances of less than one acre that are part of a larger common plan of development or sale that will ultimately disturb one or more acres of land; excluding emergency restoration activities located in or affecting waters of the state (or the banks of those waters); and routine maintenance activity that is performed to maintain the original line and grade, hydraulic capacity or original purpose of a facility.” (NYS DOT)**

Response: Emergency restoration activities require an emergency authorization and are not authorized by GP-0-20-001; therefore, no changes were made in the final GP-0-20-001. Emergency authorizations are allowed pursuant to 6 NYCRR 621.12. The owner or operator should contact the Department’s Division of Environmental Permits to determine the procedures for Emergency Authorizations.

**Comment 2: Add to subsection (1): “(1) Construction activities involving soil disturbances of one (1) or more, *but less than one hundred (100), acres;*”**

**Rationale: Construction projects disturbing more than 100 acres should obtain an individual SPDES permit. Projects of a significant size should seek individual SPDES permit coverage, given the increased potential threat to water quality from large construction projects and the need for individualized attention and scrutiny of potential effects from discharges of this magnitude. A bright line standard set at 100 acres should ensure that project sponsors will have notice from the outset that their large projects are not covered by the general permit and will immediately alert staff from the Department and other reviewing agencies that an individual permit will be required. Clear, manageable standards are a well-established tool in the SPDES permitting context, where acreage limits set at round numbers are often used as a proxy for potential impacts, while concurrently providing clear notice to the regulated community.**

**(WIG)**

Response: The comment does not provide a basis for the recommended change, such as identifying adverse impacts on water quality specifically from construction activities over the proposed 100-acre threshold that are not being achieved by the conditions of GP-0-20-001. GP-0-20-001 already includes provisions for large projects that are protective of water quality; therefore, no changes were made in the final GP-0-20-001.

For example, Parts I.B.1 and I.C.1 of GP-0-20-001 specify the erosion and sediment control requirements, and post-construction stormwater management practice requirements, applicable to **all** covered construction activities, including those over 100 acres. The technical standards referenced in Parts I.B.1 and I.C.1. require the owner to consider environmental site design when planning a development. The planning practices for all projects (particularly applicable to large projects) include techniques such as Preservation of Undisturbed Areas, Preservation of Buffers, Open Space Design and Locating Development on Less Sensitive Areas. These techniques are intended to mimic hydrology by reducing runoff volume from pre- to post-development conditions. This results in the control of stormwater runoff (rate and volume) from a development.

Additionally, GP-0-20-001 limits soil disturbance to a maximum of 5 acres at any one time unless the Department has provided prior written authorization. For

construction activities that propose to disturb 5 or more acres at any one time, Part II.D.3. of GP-0-20-001 requires the owner or operator to implement heightened measures (e.g. increased inspection frequency, development of a phasing plan, shorter stabilization time frame). Additionally, a municipality which is a regulated, traditional land use control municipal separate storm sewer system (MS4) must review the stormwater pollution prevention plan (SWPPP) for construction activities of all sizes that require coverage under GP-0-20-001. This additional level of review provides additional protections against any adverse water quality impacts that may be associated with any construction activity within the MS4 jurisdiction, including those over 100 acres. No adverse water quality impacts have been identified utilizing these approaches, which have been included in three previous iterations of the Department's general permit for stormwater discharges from construction activities (CGP).

The Department has the authority to address adverse water quality impacts from any covered construction activity. Pursuant to 6 NYCRR 750-1.21(e), the Department can require a covered construction activity to apply for an individual SPDES permit. This would apply in situations where the covered construction activity is in violation of ECL section 17-0501 or is a significant contributor of pollutants.

## **B. Effluent Limitations Applicable to Discharges from Construction Activities**

### **Comment 3: Part I.B.1.a.ii**

**The draft permit proposes to require that erosion and sediment controls must be designed, installed and maintained to, among other required performance criteria, “control stormwater discharges, including both peak flowrates and total stormwater volume, to minimize channel and streambank erosion and scour in the immediate vicinity of the discharge points.”**

**The above requirement in the US Environmental Protection Agency 2017 National Pollutant Discharge Elimination System (NPDES) General Permit for Discharges from Construction Activities (modified June 2019) includes a footnote stating “Examples of control measures that can be used to comply with this requirement include the use of erosion controls and/or velocity dissipation devices (e.g., check dams, sediment traps), within and along the**

**length of a stormwater conveyance and at the outfall to slow down runoff.”**

**The NPDES General Permit footnote provides examples of measures that control stormwater velocity and peak discharge. A search of the New York State Standards and Specifications for Erosion and Sediment Control did not yield examples of erosion and sediment control measures that control “total stormwater volume.” The intent of Part I.B.1.a.ii appears to be to control stormwater discharge (flow rate) to be less erosive. Controlling stormwater *volume* is best accomplished not with erosion and sediment control measures but with green infrastructure and standard stormwater management practices that reduce runoff volume through infiltration, evapotranspiration and plant uptake. Runoff reduction is already required as a component of Part I.C.2.a. and b. of the permit.**

**Please revise Part I.B.1.a.ii to: “control stormwater discharges, including both stormwater runoff velocity and peak discharge, through the use of velocity dissipation measures to minimize channel and streambank erosion and scour in the immediate vicinity of the discharge points.” (NYS DOT)**

Response: The language in Part I.B.1.a.(ii) of GP-0-20-001 is consistent with EPA’s updates to their non-numeric effluent limitations in EPA’s 2017 Construction General Permit, modified in June 2019; therefore, no changes were made in the final GP-0-20-001. Regarding the design criteria for the different erosion and sediment controls that can be used to address this non-numeric effluent limitation, Part I.B.1. of GP-0-20-001 requires an owner or operator to select and design erosion and sediment control measures in accordance with the Department’s technical standard, “New York State Standards and Specifications for Erosion and Sediment Control”, dated November 2016 (Blue Book), or provide a demonstration of equivalency, as defined in the permit. If the erosion and sediment control practices are implemented in accordance with the Blue Book, the owner/operator will be in compliance with Part I.B.1.a.(ii).

As part of the practice selection and design process, the design professional should first refer to Section 2, “Site Planning, Preparation and Management” in the Blue Book. This section requires project designers to consider environmental site design

when planning a development. This section also references the green infrastructure planning and practices included in Chapter 5 of the NYS Stormwater Management Design Manual. The planning practices include techniques such as Preservation of Undisturbed Areas, Preservation of Buffers, Open Space Design and Locating Development on Less Sensitive Areas. These techniques are intended to mimic hydrology by reducing runoff volume from pre- to post-development conditions. This results in the control of stormwater runoff (rate and volume) from a development, thereby addressing the non-numeric effluent limitations in Part I.B.1.a.(ii) of GP-0-20-001. The Blue Book also provides the design criteria for a number of structural controls (e.g. Flow Diffuser, Flow Spreader, Grass Waterway, Lined Waterway, Paved Flume, Armored Slope and Channel Stabilization) that can be used to address the peak discharge component of the non-numeric effluent limitations in Part I.B.1.a.(ii) of GP-0-20-001.

**Comment 4: The Draft Permit adds additional requirements for “Erosion and Sediment Controls,” including the control of peak flowrates of stormwater (Part I.B.1.a). Under the Draft Permit, “controls must be designed, installed and maintained to . . . (ii) Control stormwater discharges, including both peak flowrates and total stormwater volume, to minimize channel and streambank erosion and scour in the immediate vicinity of the discharge points.”<sup>1</sup>**

**The City urges NYSDEC to clarify that “peak flowrates” and “total stormwater volume” should be calculated in the context of erosion and sediment controls the same way they are for post- construction controls. This can be done with a reference to the New York State Stormwater Management Design Manual, and a clarification that “total stormwater volume” refers to the quantity designated as “Vr” in the Design Manual. (NYC)**

Response: The non-numeric effluent limitations in Part I.B.1.(a) of GP-0-20-001 apply to the erosion and sediment controls used during construction, not the post-construction controls; therefore, no changes were made in the final GP-0-20-001. See response to Comment 3.

**Comment 5: NYSDEC draft Construction General Permit (CGP) page 2 Part I B.1.a: NYSDEC should add subsections in this part that address cleaning sediment controls, minimizing trackout, and possible treatment chemical use such as EPA 2017 CGP pages 8-11 – 2.2.3, 2.2.4, and 2.2.13. Also, does**

**NYSDEC draft CGP page 4 – Part 1 B.1.f address EPA' 2017 CGP page 10 – 2.2.10 storm drain inlets subsection? (EPA)**

Response: No changes have been made in the final GP-0-20-001 in response to this comment as the concerns raised are adequately addressed in the Blue Book, compliance, or equivalency, with which is required by Part I.B.1. of GP-0-20-001. The Blue Book includes standards and specifications that address each of the referenced sections from EPA's 2017 Construction General Permit, modified in June 2019. For example, Section 2.2.3 of EPA's 2017 Construction General Permit, modified in June 2019, "Install sediment controls along the perimeter..." is addressed by the "Silt Fence" and "Straw Bale Dike" standards in the Blue Book (see page 5.54 and 5.63 in the Blue Book). Section 2.2.4 of EPA's 2017 Construction General Permit, modified in June 2019, "Minimize sediment track-out" is addressed by the "Stabilized Construction Access" standard (see page 2.30 in the Blue Book). Section 2.2.10 of EPA's 2017 Construction General Permit, modified in June 2019, "Protect storm drain inlets." is addressed by the "Storm Drain Inlet Protection" standard (see page 5.57 in the Blue Book), and Section 2.2.13 "If using treatment chemicals" is addressed by the "Chemical Treatment" section (see page 5.1 in the Blue Book). As required by Part I.B.1 of GP-0-20-001, the owner or operator must select, design, install, implement and maintain control measures in accordance with the Blue Book, or its equivalent, to meet the effluent limitations.

**Comment 6: NYSDEC draft CGP page 3 Part I B.1.d.ii: Include hazardous and toxic waste in the list of minimized items in this subsection such as EPA 2017 CGP page 16 – 2.3.3(d). (EPA)**

Response: The Department has revised Part I.B.1.d. ii. in the final GP-0-20-001 as suggested by this comment.

**Comment 7: Soil stabilization following the cessation of soil disturbance activity should be required to be completed in seven days for all construction sites, not just those that directly discharge to a 303(d) segment. (Part 1B(1)(b)) (CCHD)**

Response: No changes have been made in the final GP-0-20-001 in response to this comment. The requirement to complete soil stabilization within 14 days after the cessation of soil disturbance activity has been in the Blue Book since August

2005 and incorporated into previous iterations of the CGP since that time. This requirement has proven to be effective in controlling the discharge of sediment from regulated construction sites. GP-0-15-001 included the 7-day stabilization requirement for direct discharges to waterbody segments listed on the final New York State Section 2016 303(d) List of Impaired/TMDL Waters. This heightened requirement was added to make GP-0-15-002 consistent with EPA's 2012 Construction General Permit.

In addition, Part IV.C.2.a. of the final GP-0-20-001, which remains unchanged from the draft and previous iterations of the CGP, requires a Qualified Inspector to perform weekly inspections of the site and erosion and sediment control practices being used. This oversight provides for early detection of problems or deficiencies with the practices (e.g. lack of maintenance, incorrect installation, insufficient stabilization, etc.) and has also proven to be effective in controlling the discharge of sediment from a site. It is important to note that all construction activities which have received authorization to disturb greater than 5 acres at any one time must also complete soil stabilization measures within 7 days and have the Qualified Inspector perform 2 inspections every 7 calendar days. (see Part II.D.3.b. and Part IV.C.2.b. of GP-0-20-001).

### **C. Post-construction Stormwater Management Practice Requirements**

No comments received on this Section.

### **D. Maintaining Water Quality**

**Comment 8: Part I.D. (p.8), Maintaining Water Quality; Part I.F.5(p.10). After bullet 3 in Part I.D., modify the language as follows: "If there is evidence indicating that the stormwater *discharges* authorized by this permit are causing, have the reasonable potential to cause, or are contributing to a violation of the *water quality standards, including a net increase of phosphorus to any water body within the watersheds specified in Appendix C*; the *owner or operator* must take appropriate corrective action in accordance with Part IV.C.5. of this general permit and document in accordance with Part IV.C.4. of this general permit. To address the *water quality standard* violation the *owner or operator* may need to provide additional information, include and implement appropriate controls in the SWPPP to correct or *mitigate* the problem, *such as including treatment of***

**~~off-site stormwater or financing of municipal retrofit projects.”, or obtain an individual SPDES permit.”~~**

**At the end of Part I.F.5 add: “such ineligible discharges include discharges from construction and development sites that result in a net increase of phosphorus to any water body within the watersheds specified in Appendix C”;**

**Rationale:** These additions are warranted to clarify permit coverage to prohibit any project from contributing to violations of water quality standards, including discharges of phosphorus in amounts that will result in the growth of algae and impairment of reservoir waters for their best usages. 6 N.Y.C.R.R. Part 703.2. Despite significant progress on land acquisition, riparian buffers, and other programs and regulations within the NYC Watershed, phosphorus levels have remained above guidance values for several years as summarized in Table 1, below. Therefore, making clear that construction projects may not contribute to any net increase of phosphorus within the NYC Watershed is critically important.

**The WIG Office incorporates its comments on the Draft 2017 New York City Filtration Avoidance Determination, attached as Exhibit A, including the study by Dr. Robert Pitt dated September 5, 2017, and WIG’s subsequent submission by Dr. Pitt to the Department dated May 30, 2019, attached as Exhibit B, which show how construction and development of undeveloped land, even when using the best practices set forth in Chapter 10 of New York’s Stormwater Design Manual, will frequently increase phosphorous loadings within the New York City Watershed. These comments show that to avoid a net-increase in phosphorous discharges, as required by the federal Clean Water Act and Article 17 of the ECL, “offsets” to such increases must be included in stormwater pollution prevention plans for permittees under the general permit. A permittee can obtain such offsets by treating off-site stormwater onsite or by contributing funds for municipalities to implement stormwater retrofit projects. See attached Exhibit A. (WIG)**

**Response:** No changes have been made in the final GP-0-20-001 in response to this comment. The language in Part I.D. of GP-0-20-001 is based on 6 NYCRR 750-2.1(b). The Department continues to be of the position that compliance with the conditions of GP-0-20-001 (including effluent limitations and associated

technical standards – Blue Book and New York State Stormwater Management Design Manual) control stormwater discharges as necessary to meet applicable water quality standards for all waters. This approach is consistent with EPA’s 2017 Construction General Permit, modified in June 2019.

Previous iterations of the CGP since 2010 have required reductions in the volume of runoff using stormwater management practices that provide infiltration, groundwater recharge, reuse, recycle and/or evaporation/evapotranspiration (i.e. Runoff Reduction). These practices are expected to eliminate stormwater discharges and the associated pollutants from the most frequent storms with the highest pollutant levels (90<sup>th</sup> percentile or 1-year). The combination of runoff reduction and the sizing criteria contained in the New York State Stormwater Management Design Manual are protective of water quality. The comment on the adequacy of Chapter 10 of the New York State Stormwater Management Design Manual (Design Manual) in reducing the phosphorus loading (see Exhibit B/ Dr. Robert Pitt study) is a more appropriate consideration for the update to the Design Manual. Department staff are working on an update of the Design Manual and will consider this comment in development of that update. The update will be publicly noticed before finalization and incorporated into the CGP as a permit modification or at the time of renewal.

Additionally, New York City Department of Environmental Protection (NYCDEP) has adopted NYSDEC’s technical standards (Blue Book and New York State Stormwater Management Design Manual) in their watershed rules and regulations. Similar to NYSDEC, NYCDEP does not require a pollutant load analysis but does require all projects in the East of Hudson watershed to follow Chapter 10 of the NYSDEC’s Design Manual.

Concerns expressed related to progress made in achieving phosphorus levels in the NYC watershed, are addressed through updates to the watershed implementation plan(s) which considers all sources of the impairing pollutant and adjusts the plans for implementation to ensure progress is made to meet water quality standards. NYSDEC is in the process of updating the Croton Watershed Phase II Phosphorus Total Maximum Daily Load (TMDL) Implementation Plan which addresses urban runoff and other sources including septic systems, streambank stabilization, land acquisition and other non-point sources such as municipal roadside ditches. Comments related to additional controls for new development such as an offset program or enhancements to the retrofit program should be addressed through this process.

The comment does not provide a basis for the recommended change, such as

identifying adverse impacts on water quality specifically from construction activities that are not being achieved by the conditions of GP-0-20-001. The Department, though, has the authority to address adverse water quality impacts from any covered construction activity. Pursuant to 6 NYCRR 750-1.21(e) the Department can require a covered construction activity to apply for an individual SPDES permit. This would apply in situations where the covered construction activity is in violation of ECL section 17-0501 or is a significant contributor of pollutants.

See also response to Comment 3.

#### **E. Eligibility Under This General Permit**

**Comment 9: NYSDEC draft CGP page 9 – Part 1 E.2: NYSDEC should add language that includes stormwater runoff, snowmelt runoff, and surface runoff after “stormwater discharges” in the paragraph as per EPA’s 2017 CGP page 2 - 1.2.1(a). (EPA)**

Response: The Department has revised Part I.E.2. in the final GP-0-20-001 as suggested by this comment.

**Comment 10: NYSDEC draft CGP page 9 – Part 1 E: Under this section, a new subsection should be added to include “support activities” as per EPA CGP page 3 – 1.2.1(c). (EPA)**

Response: Parts III.B.1.b. and k. of the final GP-0-20-001, which remain unchanged from the draft and previous iterations of the CGP, include support activities as suggested by this comment; therefore, no changes have been made. Part III.B.1.b. addresses the material, waste, borrow or equipment storage areas, and Part III.B.1.k. addresses the concrete or asphalt batch plants. Pursuant to Part III.B.1. of GP-0-20-001, which remains unchanged from the draft and previous iterations of the CGP, the SWPPP must identify/show where those areas are located.

**Comment 11: NYSDEC draft CGP page 9 E.3: EPA believes that “landscape irrigation, potable water including uncontaminated water line flushings, uncontaminated non-turbid discharges of ground water or spring water, and foundation or footing drains where flows are not contaminated with process materials such as solvents or contaminated ground water” should be added to the list of authorized non-stormwater discharges as per EPA 2017 CGP page 3 – 1.2.2(c), (f), (j), and (k). (EPA)**

Response: The Department has revised Part I.E.3 in the final GP-0-20-001 as suggested by this comment. Part I.E.3. now references 6 NYCRR 750-1.2(a)(29) (the non-stormwater discharges authorized by GP-0-20-001). Two additional non-stormwater discharges from three previous iterations of the CGP are also included:

- “waters to which other components have not been added that are used to control dust in accordance with the SWPPP”, and
- “uncontaminated *discharges* from construction site de-watering operations”

Part I.E.3. is now inclusive of all the non-stormwater discharges requested by the comment for consistency with the 2017 EPA’s Construction General Permit, modified in June 2019.

#### **F. Activities Which Are Ineligible for Coverage Under This General Permit**

##### **Comment 12: Part I. Permit Coverage and Limitations, F. Activities Which Are Ineligible for Coverage Under This General Permit (p. 10)**

The Draft Permit excludes from general permit eligibility construction activities for residential, commercial and institutional projects that “*disturb one (1) or more acres of land with a Soil Slope Phase that is identified on the United States Department of Agriculture (“USDA”) Soil Survey for the County where the disturbance will occur as D, provided the map unit name is inclusive of slopes greater than 25%*” (Part I.F.6); and construction activities for linear transportation and linear utility projects that “*disturb two (2) or more acres of land*” and meet the same soil slope phase criteria described in Part I.F.6 (Part I.F.7).

The City is concerned that the draft language could be interpreted as requiring the entire area of disturbance to occur at Soil Slope Phase D or steeper slopes for the relevant construction activities to be ineligible for the general permit. The City asks NYSDEC to rephrase these sections to clarify that under subsection Parts I.F.6 and 7, NYSDEC will require individual permits for construction activities that disturb the threshold acreage where at least part of the disturbed land meets the specified soil slope phase criteria. (NYC)

Response: The Department has revised Parts I.F.6. and 7. in the final GP-0-20-001 to clarify those conditions, as suggested by this comment. Construction

activities, where at least part of the disturbed acreage meets the threshold acreage (see Parts I.F.6.c. (1 acre) and 7.c. (2 acres)), are ineligible for coverage under GP-0-20-001; provided the construction activity also meets the criteria in Part I.F.6.a. and b. or Part I.F.7.a. and b. For example, if a residential construction activity disturbs a total of 10 acres, where 3.5 acres of that total meets the criteria in Parts I.F.6.a. – c., the construction activity is ineligible for coverage under the CGP. However, if the total disturbance that meets the criteria in Parts 1.F.6.a. – c. is only 0.9 acres, the construction activity would be eligible for coverage under the CGP.

**Comment 13: Any construction activities conducted on a slope greater than 25% need to be regulated by special permit. The limited scope of this general permit will not cover the need for operational and engineered sediment controls for steep slopes. Please revise section (Part 1F(6) &(7)). (OLWMC)**

Response: No changes have been made in the final GP-0-20-001 in response to this comment as GP-0-20-001 includes adequate requirements to address limited disturbances of steep slopes. No adverse water quality impacts have been identified utilizing this approach, which has been included in three prior iterations of the CGP. The comment also does not provide a basis for the recommended change, such as identifying adverse impacts on water quality specifically from construction activities that are not being achieved by the conditions of GP-0-20-001.

**Comment 14: Construction activities for all properties with a slope greater than 25% should not be eligible for coverage under this general permit. Currently only some properties with a slope greater than 25% are ineligible. (Part 1F(6) &(7)). (CCHD)**

Response: See response to Comment 13.

**Comment 15: Part I.F.6.a.(p.10). “*Construction activities* for residential, commercial and institutional projects,” and Part I.F.7.a. (p.10) “*Construction activities* for linear transportation projects and linear utility projects: Where the *discharges* from the *construction activities* are tributary to waters of the state classified as AA or AA-s . . .” Add “A” and “A-s” waters to these sections.**

**Rationale: Several of the reservoirs in the NYC Watershed are classified as**

**A, such as the Amawalk, Middle Branch, and Muscoot. Although these waters are already included in larger Class AA and/or AA-s watersheds pursuant to NYSDEC watershed mapping, specifying that A and A-s waters are included would better clarify the coverage of the permit, ensuring heightened protection for drinking water sources and also providing clear notice to the regulated community. (WIG)**

Response: No changes have been made in the final GP-0-20-001 in response to this comment. As commenter notes, the stormwater interactive mapper provides the location of areas subject to Parts I.F.6.a and I.F.7.a. so it is clear to the regulated community where the heightened protection for drinking water sources apply.

Additionally, NYCDEP reviews the SWPPP for projects in the East and West of Hudson Watersheds. This additional level of review provides increased oversight to ensure eligibility requirements are met within these watersheds.

No adverse water quality impacts have been identified utilizing this approach, which has been included in three prior iterations of the CGP. The comment also does not provide a basis for the recommended change, such as identifying projects that received coverage under the CGP that were ineligible. The Department, though, has the authority to address adverse water quality impacts from any covered construction activity. Pursuant to 6 NYCRR 750-1.21(e), the Department can require a covered construction activity to apply for an individual SPDES permit. This would apply in situations where the covered construction activity is in violation of ECL section 17-0501 or is a significant contributor of pollutants.

**Comment 16: Part I.F.6.c. (p.10). “*Construction activities* for residential, commercial and institutional projects . . .” and Part I.F.7.c.<sup>1</sup> (p.10) “*Construction activities* for linear transportation projects and linear utility projects: [. . .]**

**Add specified language to both Parts I.F.6.c and I.F.7.c: “c. Which are undertaken on land with a Soil Slope Phase that is identified as an E or F, or the map unit name is inclusive of 25% or greater slope, on the *current* United States Department of Agriculture (“USDA”) Soil Survey for the County where the disturbance will occur.”**

**Add to both Parts I.F.6.c and I.F.7.c: “*Any site-specific survey or LIDAR*”**

***mapping to two-foot contour intervals completed for planning, design or construction of the project will take precedence over USDA maps.”***

**Rationale:** These revisions are warranted to determine whether construction projects on steep slopes will be required to seek individual permit coverage, and to specify that the actual conditions on the site established by a site-specific survey or LIDAR analysis will determine if an individual permit is required. Given the particular threat to water quality in the NYC Watershed from development on steep slopes, clarification of these provisions and the encouragement of a site-specific topographic survey or LIDAR analysis is warranted to ensure protection of water quality standards, while also providing clear notice to the regulated community. (WIG)

Response: The Department revised Parts I.F.6.c. and I.F.7.c. in the final GP-0-20-001 to reference the current USDA soil survey as suggested. Also see response to Comment 12.

Regarding the second part of the comment, on using a site-specific survey or LIDAR instead of the Soil Survey maps for determining eligibility, no changes have been made in the final GP-0-20-001. Allowing owners or operators to use multiple approaches to determine the “steep slope” areas for eligibility determinations will be confusing and complicate the general permit process. For example, there is no uniform procedure for calculating slope using existing contours (i.e. what slope length should be used, should slope length be averaged for slopes with varying lengths, etc.). Additionally, such an approach is contrary to the concept of a “general permit,” as more fully described in ECL section 70-0017(6) and 6 NYCRR 750-1.21(a).

The Department agrees that site specific topographic information is necessary to adequately control runoff. Under the general permit, site specific information must be used in the development of the SWPPP and associated control measures to ensure water quality is protected. Site specific information must be used to establish the existing and final contours (see page 2.3 in the Blue Book) when designing the erosion and sediment control practices and post-construction stormwater management practices required by Part III.B.1. and 2. of GP-0-20-001 to ensure that the practices function as intended.

No adverse water quality impacts have been identified utilizing this approach, which has been included in three prior iterations of the CGP. The comment does not provide a basis for the recommended change, such as identifying adverse

impacts on water quality specifically from construction activities that are not being achieved by the conditions of GP-0-20-001. The Department, though, has the authority to address adverse water quality impacts from any covered construction activity. Pursuant to 6 NYCRR 750-1.21(e), the Department can require a covered construction activity to apply for an individual SPDES permit. This would apply in situations where the covered construction activity is in violation of ECL section 17-0501 or is a significant contributor of pollutants.

## Part II. OBTAINING PERMIT COVERAGE

### A. How To Obtain Coverage

**Comment 17: The Draft Permit states that “the requirement for an owner or operator to have its SWPPP reviewed and accepted by the regulated, traditional land use control MS4 prior to submitting the NOI to the Department does not apply . . . where the owner or operator of the construction activity is the regulated, traditional land use control MS4 or NYC DEP.”**

The City understands that the proposed exemption of “NYC DEP” in Part II.A.3 of the Draft Permit does not capture the present intent of NYSDEC and agrees that NYC DEP should not be exempt from the requirements of Part II.A.3.

Further, because NYSDEC has added “*the City of New York*” to the definition of “regulated, traditional land use control MS4” in Appendix A, Part II.A.3 could be interpreted as exempting City agencies from this requirement even if “NYC DEP” is deleted from this provision. This would be inconsistent with the provision of the City’s stormwater local law (N.Y.C. Administrative Code § 24-552) that directs DEP to issue MS4 SWPPP acceptance forms to applicants for covered development projects subject to the Construction General Permit, including applicants that are City agencies. The City recommends that NYSDEC revise the last clause of Part II.A.3 to read:

**or where the owner or operator of the construction activity is the regulated, traditional land use control MS4, except as provided under applicable local law ~~or NYC DEP.~~ (NYC)**

Response: Changes were made to Part II.A.3 to clarify that the owner or operator of a construction activity is not relieved from complying with the requirement to

have its SWPPP reviewed and accepted by NYCDEP as required by the NYC Administrative Code.

**B. Notice of Intent (NOI) Submittal**

**Comment 18: NYSDEC draft CGP page 13 Part II B: This section should include a subsection that directs the permittee to NYSDEC's section for permit termination such as EPA's 2017 CGP page 6 – 1.4.5(a). (EPA)**

Response: Part II.D.1. of the final GP-0-20-001, which remains unchanged from the draft and previous iterations of the CGP, addresses this comment; therefore, no changes have been made.

**C. Permit Authorization**

No comments received on this Part.

**D. General Requirements For Owners or Operators With Permit Coverage**

**Comment 19: EPA 2017 CGP page 6 – 1.5: Where does NYSDEC provide for posting of a notice of the permittee's permit coverage at the construction site? (EPA)**

Response: Part II.D.2. of the final GP-0-20-001, which remains unchanged from the draft and previous iterations of the CGP, addresses this comment; therefore, no changes have been made. Part II.D.2 requires the owner or operator to maintain the NOI Acknowledgment Letter, along with other documents required by GP-0-20-001, in a secure location such as a job trailer, on-site construction office, or mailbox with lock.

**Comment 20: Part II.D.2 contains a list of documents that “the owner or operator shall maintain a copy of . . . at the construction site until all disturbed areas have achieved final stabilization and the NOT has been submitted to the Department.”**

**The City asks that this list be revised to include the “certification statement” signed by each contractor and subcontractor as required by Part III.A.6. (NYC)**

Response: The Department has revised Part II.D.2. in the final GP-0-20-001, as suggested by this comment.

**E. Permit Coverage for Discharges Authorized Under GP-0-15-002**

No comments received on this Part.

**F. Change of Owner or Operator**

No comments received on this Part.

**Part III. STORMWATER POLLUTION PREVENTION PLAN (SWPPP)**

**A. General SWPPP Requirements**

**Comment 21: NYSDEC draft CGP page 20 Part III A: NYSDEC should include in the SWPPP the requirements found at EPA 2017 CGP page 26 - 7.2.1 and 7.2.2 and page 28 – 7.2.5 (listing of all site operators, stormwater team, and non-stormwater discharges respectively). (EPA)**

Response: No changes have been made. Part III.A.6 of the final GP-0-20-001, which remains unchanged from the draft and previous iterations of the CGP, addresses Sections 7.2.1 and 7.2.2 (listing of all site operators and stormwater team) of EPA's 2017 Construction Stormwater General permit, modified June 2019. Part I.E.3 of the final GP-0-20-001 (see following language) addresses Section 7.2.5 (listing of non-stormwater discharges) of EPA's 2017 Construction Stormwater General permit, modified June 2019:

*“All non-stormwater discharges must be identified in the SWPPP.”*

**Comment 22: The proposed change to Part III.A.4. seems to imply that construction drawings will need to be updated every time a change is made on site to ESC's. Specific to linear utility projects where there is constant project movement within the corridor, we would anticipate that the maps would require updating on a daily or weekly basis to keep up with field changes, including types of ESC's being installed, and or the location of installation (even for example a shift in the location of silt fence to make access more feasible). Can you please clarify that those assumptions are**

**correct? Can you confirm that mark ups by hand to the drawings located in the on-site SWPPP binder are acceptable to meet the intent of this condition? We do not believe that it would be practical to update and reissue maps in GIS on a daily or weekly basis to the field (there would be delays in getting the information to the field, printers often aren't available in job trailers, by the time they are updated by the SWPPP preparer, new changes would be required, etc).**

**Further, the intent of the ESC's in a SWPPP (and the Blue Book) is to be fluid and dynamic. Mapping changes could easily hinder this intent, and efficient construction, if they are required to be made by the SWPPP preparer. We do agree that it makes sense to document final field conditions in Part III.A.4.d. Can you please clarify that the intent of that requirement is for permanent post construction stormwater management facilities? (NG)**

Response: The Department agrees that the erosion and sediment control component of the SWPPP is dynamic and must be continuously amended to reflect changes occurring at the construction site. Part III.A.4. of the final GP-0-20-001, which remains unchanged from the draft, requires the owner or operator, at a minimum, to amend the SWPPP, including construction drawings: whenever the current provisions prove to be ineffective in minimizing pollutants in stormwater discharges from the site; whenever there is a change in design, construction, operation or maintenance at the construction site that has or could have a significant effect on the discharge of pollutants; to address issues or deficiencies identified during an inspection by the qualified inspector, the Department or other regulatory authority; and to document final construction conditions. This includes any post-construction stormwater management controls constructed as part of the construction activity. To provide flexibility and avoid unnecessary delays, the Department did not include a requirement in GP-0-20-001 that specifies the format that should be used to document modifications of the erosion and sediment controls called for in the SWPPP. The owner/operator or their "Qualified Inspector" needs to ensure that whatever format is used, there is a clear, concise description of the modifications and final construction conditions. This could include hand mark-ups provide that they are clear and provide the necessary information.

**B. Required SWPPP Contents**

**Comment 23: Part III.B.2.c.iii (p.23). Add language: “Results of stormwater modeling (i.e. hydrology and hydraulic analysis) for the required storm events, *using the most updated, recognized hydrologic data available, such as the NRCC or NOAA databases. . .*”**

**Rationale: This addition is warranted to require the use of the most updated and recognized hydrologic data to replace the Type II and Type III rainfall distributions, which were based on 1961 data and are now out of date, especially in light of the precipitation changes in New York as a result of climate change. (WIG)**

Response: This comment is a more appropriate consideration for inclusion in the update to the New York State Stormwater Management Design Manual (Design Manual); therefore, no changes have been made in the final GP-0-20-001. Department staff are working on an update of the Design Manual and will consider this comment in development of that update. The update will be publicly noticed before finalization and incorporated into the CGP as a permit modification or at time of a renewal.

**C. Required SWPPP Components by Project Type**

No comments received on this Part.

**Part IV. INSPECTION AND MAINTENANCE REQUIREMENTS**

**A. General Construction Site Inspection and Maintenance Requirements**

No comments received on this Part.

**B. Trained Contractor Maintenance Inspection Requirements**

No comments received on this Part.

**C. Qualified Inspector Inspection Requirements Comment 24: NYSDEC draft CGP page 25 Part IV C.1: Please explain how the subparagraphs (a) and (b) do not contradict the requirements of 40 CFR Part 122.26(a)(15)(i) describing the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one acre and less than five acres? (EPA)**

Response: Part IV.C.1. of the final GP-0-20-001, which remains unchanged from the draft and prior iterations of the CGP, addresses the required inspection frequency for a construction activity subject to the GP-0-20-001, not the requirement to obtain coverage under GP-0-20-001. The requirement to obtain coverage is in Part I.A. "Permit Application" in the final GP-0-20-001, which remains unchanged from the draft and prior iterations of the CGP. The requirements in Part I.A. of GP-0-20-001 comply with 40 CFR 122.26(a)(15)(i).

## **Part V. TERMINATION OF PERMIT COVERAGE**

### **A. Termination of Permit Coverage**

**Comment 25: NYSDEC draft CGP page 29 Part V A: NYSDEC should include EPA 2017 CGP page 6 – 1.4.5(c) in this part. (EPA)**

Response: Parts II.E. and F. of the final GP-0-20-001, which remain unchanged from the draft and previous iterations of the CGP, address this comment; therefore, no changes have been made. Part II.E. addresses the process for permit authorization under this renewal, and Part II.F. addresses the permitting process when there is a change in the owner or operator.

**Comment 26: Part V.A.2.a. (p.29). Add specified language to: "Total project completion - All *construction activity* identified in the SWPPP has been completed; and all areas of disturbance have achieved *final stabilization*; and all temporary, structural erosion and sediment control measures have been removed; and all post-construction stormwater management practices have been constructed *and documented with signed and sealed as-built construction drawings* in conformance with the SWPPP and are operational;"**

Rationale: Because projects as built can differ from their initial designs, documentation of the as-built drawings are needed to ensure

**compliance with applicable standards in the State's Stormwater Design Manual. (WIG)**

Response: Part III.A.4. of the final GP-0-20-001, which remains unchanged from the draft and prior iterations of the CGP, requires updates to the SWPPP (including construction drawings) whenever construction activity changes occur; therefore, the final version of the SWPPP will have the most up-to-date version of the site construction drawings. In addition, Part V.A.3 of the final GP-0-20-001, which remains unchanged from the draft and prior iterations of the CGP, requires the "Qualified Inspector" to perform a final inspection of the post-construction stormwater management practices and then sign the certification statement on the Notice of Termination (see Section VIII. "Qualified Inspector Certification" on the Notice of Termination). Therefore, the language in GP-0-20-001 achieves the same goal as the changes suggested by the comment and no changes were made. See response to Comment 22.

**Comment 27: Part V.A.2.b. (p.29). Add specified language to: "Planned shutdown with partial project completion - All soil disturbance activities have ceased; and all areas disturbed as of the project shutdown date have achieved *final stabilization*; and all temporary, structural erosion and sediment control measures have been removed; and all post-construction stormwater management practices required for the completed portion of the project have been constructed *and documented with signed and sealed as-built construction drawings* in conformance with the SWPPP and are operational;"**

**Rationale: Because projects as built can differ from their initial designs, documentation of the as-built drawings are needed to ensure compliance with applicable standards in the State's Stormwater Design Manual. (Note: suggested changes are italicized) (WIG)**

Response: See response to Comment 26.

**Part VI. REPORTING AND RETENTION OF RECORDS****A. Record Retention**

No comments received on this Part.

**Part VII. STANDARD PERMIT CONDITIONS**

**A. Duty to Comply**

No comments received on this Part.

**B. Continuation of the Expired General Permit**

No comments received on this Part.

**C. Enforcement**

No comments received on this Part.

**D. Need to Halt or Reduce Activity Not a Defense**

No comments received on this Part.

**E. Duty to Mitigate**

No comments received on this Part.

**F. Duty to Provide Information**

No comments received on this Part.

**G. Other Information**

No comments received on this Part.

**H. Signatory Requirements**

No comments received on this Part.

**I. Property Rights**

No comments received on this Part.

**J. Severability**

No comments received on this Part.

**K. Requirement to Obtain Coverage Under an Alternative Permit**

No comments received on this Part.

**L. Proper Operation and Maintenance**

No comments received on this Part.

**M. Inspection and Entry**

No comments received on this Part.

**N. Permit Actions**

No comments received on this Part.

**O. Definitions**

See Appendix A below.

**P. Re-Opener Clause**

No comments received on this Part.

**Q. Penalties for Falsification of Forms and Reports**

No comments received on this Part.

**Comments on APPENDIX A – Definitions**

**Comment 28: NYSDEC draft CGP Appendix A: EPA believes that NYSDEC should add the following to the definitions: agricultural property, construction site, dewatering, embankment, endangered or threatened species, natural buffers, non-point source, point source, streambank, SWPPP, and overbank. (EPA)**

Response: The Department has revised Appendix A in the final GP-0-20-001 as suggested by this comment to include definitions for the requested words/terms.

**Comment 29: NYSDEC draft CGP Appendix A: EPA believes that adding a list of acronyms to this appendix would be helpful to permittees. (EPA)**

Response: The Department has revised Appendix A in the final GP-0-20-001 as suggested by this comment to include a list of acronyms.

**Comment 30: The definition of Qualified Inspector has been updated to**

include “*New York State Erosion and Sediment Control Program Certificate Holder*” (“Certified NYSESC”).

The City requests that NYSDEC provide a clear definition of the New York State Erosion and Sediment Control Certificate Program. Since “Certified NYSESC” is included in the definition of Qualified Inspector, the City asks that the Part IV.C. Qualified Inspector Inspection Requirements on page 25 of the Draft Permit be revised to include “Certified NYSESC” in the list of trained contractors. (NYC)

Response: The Department has revised Appendix A in the final GP-0-20-001 as suggested by the first part of this comment to include a definition for “New York State Erosion and Sediment Control Certificate Program.” The Department also revised Part IV.C. in the final GP-0-20-001, as suggested by the second part of this comment, by adding “New York State Erosion and Sediment Control Certificate Program holder.”

### **Comments on APPENDIX B - Required SWPPP Components by Project Type**

#### **Comment 31:**

##### **Temporary Impervious Surfaces:**

Table 2 (“Construction Activities that Require the Preparation of a SWPPP That Includes Post-Construction Stormwater Management Practices”) in Appendix B of the draft permit includes “permanent access roads, parking areas, substations... constructed as part of... linear utility project[s]” as project types that require post-construction stormwater management practices (SMPs). This implies that temporary impervious access roads, parking areas, etc. do not require post-construction SMPs. Currently there is no mention of temporary impervious areas in Table 1 (“Construction Activities that Require the Preparation of a SWPPP That Only Includes Erosion and Sediment Controls”) of Appendix B. The NYSDEC has previously stated that post-construction stormwater management is not required for temporary impervious areas, including temporary median crossovers for bridge maintenance projects or temporary roads/lanes for detours that will be in place for no longer than two years.

**Please revise Table 1 of Appendix B to explicitly include:  
“Temporary impervious median crossovers, detour roads, lanes, or  
other temporary impervious areas that will be in place for no longer  
than two (2) years.” (NYS DOT)**

Response: The Department has revised Table 1 in Appendix B of the final GP-0-20-001 as suggested by this comment.

**Comment 32:**

**Sidewalks, Bike Paths and Walking Paths:**

**Table 2 of Appendix B in the draft permit requires post-construction stormwater management practices for “Sidewalk, bike path or walking path projects, surfaced with an impervious cover, and are part of a residential, commercial or institutional development, or road/highway construction/reconstruction project” and “Road construction or reconstruction, including roads constructed as part of the construction activities listed in Table 1.”**

**Sidewalk and bike path projects are often constructed adjacent to roadways. These projects occasionally also include minor reconstruction of the highway, curb or shoulder to maintain the grade between the highway and path or restore areas disturbed during construction. These are not roadway projects that also include sidewalk or path construction, but sidewalk/trail projects that include incidental highway reconstruction or shoulder widening. Preserving sheet flow runoff and vegetative filtration avoids increased soil disturbance and post-construction SMPs that create new point source discharges and increase erosion potential at the outlet. Additionally, with limited available right-of-way, implementing post-construction stormwater management on NYSDOT sidewalk and bike path projects would likely require additional land acquisition solely for constructing SMPs.**

**Please include: “Sidewalk, bike path or walking path projects that include incidental highway reconstruction or shoulder widening to**

**support construction of the sidewalk or path” in Table 1 of Appendix B and modify “Road construction or reconstruction, including roads constructed as part of the construction activities listed in Table 1” in Table 2 to: “Road construction or reconstruction, including roads constructed as part of the construction activities listed in Table 1, with the exception of sidewalk, bike path or walking path projects that include incidental highway reconstruction or shoulder widening.” (NYS DOT)**

Response: The Department revised Table 1 in Appendix B of the final GP-0-20-001 to clarify the “Sidewalk, bike path or walking path projects... construction activity category as suggested by this comment. No changes were made in the final GP-0-20-001 with respect to the second part of this comment because there may be projects that include both the updated “Sidewalk, bike path or walking path...” construction activity category in Table 1 and highway construction from Table 2.

**Comment 33: I wanted to suggest that Dam/Canal Embankment rehabilitation projects be considered for exclusion from post-construction stormwater. (JMDE)**

Response: More information than is provided in the comment is needed to determine if dam/canal embankment rehabilitation would be considered a “Slope Stabilization Project.” “Slope Stabilization Projects” are in Table 1 of Appendix B of the final GP-0-20-001, which remains unchanged from the draft and prior iterations of the CGP.

**Comment 34: Construction of agricultural structures should not be exempt from preparing a SWPPP that includes post-construction management practices. Large agricultural structures, greater than one acre in size but less than 5 acres, can generate over 100,000 gallons of stormwater in a typical 1 inch storm. Climate change has resulted in more frequent violent storms where rainfall in excess of 1 inch is quite common. Town highway superintendents in Cayuga County have reported that their ditches are not able to handle additional runoff resulting from these rain events. Often this results in ditch scouring, flooding, and the erosion of areas into which the floodwaters escape causing significant sediment deposition into our streams and lakes. Governor Andrew M. Cuomo reportedly has made Community Resiliency an important part of his administration. Exempting**

**agricultural construction from post-construction management practices flies in the face of these resiliency efforts. (Appendix B, Table 1) (CCHD)**

Response: No changes have been made in the final GP-0-20-001 in response to this comment. The Department is not aware of water quality impacts utilizing this approach, which has been included in three prior iterations of the CGP. The comment does not provide a basis for the recommended change, such as identifying adverse impacts on water quality specifically from construction activities that are not being achieved by the conditions of GP-0-20-001.

There are other permit programs that address runoff from construction of agricultural structures. For example, if the agricultural structure is being constructed on a farm subject to the Concentrated Animal Feeding Operation (CAFO) general permit, the owner would be required to address roof runoff through clean water diversion practices. These practices are intended to prevent adverse water quality impacts caused by erosion from stormwater runoff. The design of these practices would be part of the required "Nutrient Management Plan" that the CAFO must prepare.

The Department has the authority to address adverse water quality impacts from any covered construction activity. Pursuant to 6 NYCRR 750-1.21(e), the Department can require a covered construction activity to apply for an individual SPDES permit. This would apply in situations where the covered construction activity is in violation of ECL section 17-0501 or is a significant contributor of pollutants.

**Comment 35: The Owasco Lake Watershed Management Council strongly agrees with the recommendations of Ms. Eileen O'Connor of the Cayuga County Department of Health. Excepting the requirement of post-construction sediment and erosion control (management) practices for agriculture is unacceptable. Agriculture, makes up nearly 70% of the Owasco Lake Watershed, and related activities have a profound significant effect on water quality conditions within lake tributaries and within the lake itself. Furthermore, the Owasco Lake Watershed is of the largest size relative to the size of the lake of all of the Finger Lakes, making it extremely susceptible to the effects of pollution. (OLWMC)**

Response: See response to Comment 34.

**Comment 36: The City appreciates NYSDEC's addition of certain bike**

**paths to its table of construction activities for which a SWPPP must only include erosion and sediment controls. However, based on the City's experience regulating bike path projects in the New York City Watershed, the City is concerned that the Draft Permit provides too broad of an exemption from post-construction controls by excluding all "*linear bike paths running through areas with vegetative cover, including bike paths surfaced with impervious cover.*" The City suggests that NYSDEC limit the scope of this exemption by including a maximum bike path width, excluding shoulders, of eleven feet. (NYC)**

Response: No changes have been made in the final GP-0-20-001 in response to this comment. The Department decided not to require the development of a SWPPP that includes post-construction controls for this type of bike path, of any width, because it runs through areas with vegetative cover, similar to a trail or walking path. The vegetative cover that runs along either side of the bike path will typically provide a natural buffer to address stormwater runoff from the bike path.

The Department has the authority to address adverse water quality impacts from any covered construction activity. Pursuant to 6 NYCRR 750-1.21(e), the Department can require a covered construction activity to apply for an individual SPDES permit. This would apply in situations where the covered construction activity is in violation of ECL section 17-0501 or is a significant contributor of pollutants.

**Comment 37: The City recommends that NYSDEC consider adding solar arrays and solar farms to Appendix B Table 1, consistent with the Department's 2018 guidance concerning solar panel projects. (NYC)**

Response: The Department is in the process of developing formal guidance including SWPPP components for the different types of solar arrays/farms; therefore, no changes have been made in the final GP-0-20-001 in response to this comment. The guidance will be publicly noticed in the ENB.

**Comment 38: The Draft Permit expands the list of construction activities that require the preparation of a SWPPP that includes post-construction stormwater management practices to include "*roads constructed as part of the construction activities listed in Table 1*" in addition to "[r]oad construction or reconstruction activity."**

**The City is concerned that this language could be interpreted as requiring post-construction controls for temporary access roads built to**

**support construction activities listed in Table 1. The City asks that NYSDEC state clearly that post-construction controls are not required for such temporary access roads when they are restored to pre-construction conditions once construction activity has ceased. (NYC)**

Response: The Department has revised Table 1 in Appendix B of the final GP-0-20-001 as suggested by this comment.

### **Comments on APPENDIX C -Watersheds Where Enhanced Phosphorus Removal Standards Are Required**

No comments received on Appendix C.

### **Comments on APPENDIX D**

No comments received on Appendix D.

### **Comments on APPENDIX E**

**Comment 39: The City observes that NYSDEC has removed both the Ashokan and Schoharie Reservoirs from the 303(d) list in Appendix E. The Draft Permit states that the list in Appendix E was “*developed using ‘The Final New York State 2016 Section 303(d) List of Impaired Waters Requiring a TMDL/Other Strategy’ dated November 2016.*”**

**However, both the Final 2016<sup>3</sup> and Draft 2018<sup>4</sup> versions of the New York State Section 303(d) List of Impaired Waters Requiring a TMDL/Other Strategy (together “List of Impaired Waters”) contain the Ashokan and Schoharie Reservoirs. The City asks that these reservoirs be included in the list of 303(d) segments in Appendix E of the Draft Permit.**

**Further, the City asks that NYSDEC amend the list of 303(d) segments in Appendix E of the Draft Permit to include a column identifying the impairment associated with each waterbody, as is provided in the “Cause/Pollutant” column of the List of Impaired Waters. (NYC)**

Response: The Department has revised Appendix E in the final GP-0-20-001 as suggested by this comment. The changes include adding a column identifying the associated impairment and adding the Ashokan and Schoharie Reservoirs to the list of impaired waters.