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FACT SHEET

For

NEW YORK STATE
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

SPDES GENERAL PERMIT
FOR STORMWATER DISCHARGES

from

MUNICIPAL SEPARATE STORM SEWER SYSTEMS (MS4s)

Permit No. GP-0-10-002

Issued Pursuant to Article 17, Titles 7, 8 and Article 70
of the Environmental Conservation Law

and

**DESIGNATION CRITERIA FOR IDENTIFYING REGULATED MUNICIPAL
SEPARATE STORM SEWER SYSTEMS (MS4s)**

October, 2009

**New York State Department of Environmental Conservation
SPDES General Permit for Stormwater Discharges from
Municipal Separate Storm Sewer Systems (MS4s) (GP-0-10-002)**

FACT SHEET

The New York State Department of Environmental Conservation (NYSDEC) is proposing to renew the SPDES General Permit for Stormwater Discharges from Municipal Separate Storm Sewer Systems (MS4s) (GP-0-08-002) as GP-0-10-002 in April, 2010. This renewal would be effective on May 1, 2010. The renewal permit is proposed for a five year term.

In response to significant public interest in the 2008 renewal permits, the NYSDEC limited the renewal to two years, and embarked on an 18 month post issuance review process. All of the commenters on the 2008 renewal permits were invited to participate in the process. The review process included nine monthly topic meetings on Green Infrastructure, Intermunicipal Cooperation, Stormwater Retrofits, Public Participation, Numeric Effluent Limits, MS4 Funding, Steep Slopes, Riparian Buffers, TMDLS, and Impaired Waters Issues. Following the 9 topic meetings, working drafts of renewal permits and revised Chapters to the New York State Stormwater Management Design Manual were provided to the participants. Following the dissemination of the working drafts, three meetings were monthly meetings were held to discuss the revisions to the Chapters to the New York State Stormwater Management Design Manual, the Construction Stormwater Permit, the MS4 permit. Participants were invited to submit comments on the working drafts.

This permit has been revised to include provisions identified as beneficial in the 18 month post issuance review process.

Updates to the New York State Stormwater Management Design Manual (Design Manual)

One of the foundations of the New York State Stormwater program is the technical standards for stormwater controls. Along the same timeline as renewal of the stormwater permits, the NYSDEC is updating the Design Manual to include green infrastructure techniques. When the Design Manual is updated, an owner or operator of a construction activity that needs post-construction stormwater management practices will be required to prepare a SWPPP that includes practices designed in conformance with or equivalent to the updated Design Manual.

The increased emphasis on a holistic approach to resource protection, water quality treatment, flow volume control, maintenance cost reduction, and the dynamics of stormwater science has led to several changes in stormwater management. Carrying out stormwater management design standards for the past few years has provided the regulatory agencies, regulated entities, and design community with valuable experiences and a body of knowledge to enhance and improve urban runoff planning, methodologies, and techniques towards implementation of green infrastructure.

The term green infrastructure, previously used to describe specific water quality management practices, has expanded in recent years to include a wide array of practices at multiple scales to

manage, reduce, and treat stormwater and maintain and restore natural hydrology by infiltration, evapotranspiration, and capture and reuse of stormwater. On a regional scale, green infrastructure is the preservation and restoration of natural landscape features, such as forests, floodplains and wetlands, coupled with policies such as infill and redevelopment that reduce overall imperviousness in a watershed. On the local scale green infrastructure consists of site- and neighborhood-specific practices, such as bioretention, trees, green roofs, porous pavements and cisterns.

The value of runoff reduction by non-structural stormwater control practices or green infrastructure techniques is increasingly recognized as a critical feature for environmentally-sound development. In addition, runoff reduction through this approach can directly translate into cost savings to the developer by reducing the size of structural stormwater control and conveyance facilities. This manual provides developers and site designers with a step by step approach to implement green infrastructure practices that can reduce the volume of stormwater runoff, minimize pollutant loads from a site, and allow a development project to meet New York State's criteria simply through a more innovative site design.

Green infrastructure approach for stormwater management reduces a site's impact on the aquatic ecosystem through the use of non-structural site planning measures and innovative techniques. The objective is to replicate pre-development hydrology by maintaining pre-construction infiltration, peak runoff flow, discharge volume, as well as minimizing concentrated flow by using runoff control techniques to provide treatment in a distributed manner before runoff reaches the waterways or the collection system. This approach offers a distinct advantage over conventional "hard" stormwater infrastructure by reducing the production of runoff and the need for collection, storage, and treatment.

Planners and designers must address this approach in a five-step process for stormwater site planning and practice selection in the SWPPP: site planning to preserve natural features and reduce impervious cover, calculation of water quality volume for the site, calculation of runoff reduction volume by applying green infrastructure techniques, use of standard treatment practices where applicable, and finally calculation of volume and peak discharge control practices where required.

Additional Designations

There are some additional areas requiring MS4 permits, resulting from application of Criterion 1 of the New York State Department of Environmental Conservation FINAL Designation Criteria for Identifying Regulated Municipal Separate Storm Sewer Systems (MS4s).

Criterion 1 designates additional areas as requiring MS4 permits as follows:

Criterion 1: MS4s discharging to waters for which an EPA-approved TMDL required reduction of a pollutant associated with stormwater beyond what can be achieved with existing programs (and the area is not already covered under automatic designation as UA).

Because EPA has approved several TMDLs, additional areas where MS4 permits are required in accordance with criterion 1 are as follows:

East Hampton (V)
East Hampton (T) – areas along the South Shore
Southhold (T) – areas along the North Shore and Fishers Island
Putnam Valley – areas tributary to Oscawana Lake

In addition to areas that will be designated under Criterion 1, NYSDEC is proposing to add a criterion 3 as follows:

Criterion 3: Automatically designated MS4 areas are extended to Town, Village or City boundaries, but only for Town, Village or City implementation of Minimum Control Measures (4) Construction Site Stormwater Runoff Control and (5) Post Construction Stormwater Management in Development and Redevelopment. This additional designation may be waived where the automatically designated area is a small portion of the total area of the Town, Village or City (less than 15 %) and where there is little or no construction activity in the area outside of the automatically designated area (less than 5 disturbed acres per year).

This criterion is being proposed because participants in the 18 month review process expressed a concern that too few construction projects receive full review and oversight. This additional designation criterion addresses this concern in part. This criterion was chosen because: (1) the areas adjacent to urbanized areas tend to be where there is a higher level of construction activity, (2) it is logistically more difficult and confusing to implement subdivision, site plan review, building permit and construction stormwater permit authorization two different ways within the same municipality, (3) it assures that more projects are reviewed, (4) it will reduce some confusion that has arisen amongst municipal officials and entities disturbing land, and (5) NYSDEC's model law for construction allows for the implementation costs to be borne by the applicant.

Permit Coverage – Public Review Process

- Coverage for permittees authorized under GP-0-08-002 (continuing permittees) will be automatically continued on an interim basis when this permit is renewed.

- MS4s not authorized under GP-0-08-002 (newly regulated permittees) must file an NOI if they are required to gain coverage under this general permit. MS4s newly authorized under this general permit, will have 3 years from becoming authorized under the permit to develop their SWMP and commence implementation.

- In accordance with EPA guidance (April 16, 2004 memo available at:

<http://www.epa.gov/npdes/pubs/hanlonphase2apr14signed.pdf>) developed in response to a Ninth Circuit Court decision (EDC v. EPA, 9th Circ. 2003), submission of NOIs will be listed in the Environmental Notice Bulletin with a 21 day period during which comments may be submitted on the NOI. Further review of MS4 authorizations would occur if the department

determines that the MS4 must be authorized under an individual permit.

Single Entity

Participants in the 18 month review process determined that addressing many of the MS4 permit requirements is better accomplished on a larger scale (e.g. County or Watershed). This concept is supported by the conclusions of the 2008 National Research Council's report entitled Urban Stormwater Management in the United States. Although the 2008 permit contains substantial provisions that allow for sharing responsibilities between many MS4s, the participants in the 18 month review process advised that the opportunity for a single entity to be authorized will further encourage larger scale coordinated implementation. Toward that end, the draft permit includes a proposed provision for a single entity to be the covered entity for many municipalities.

Impaired Waters

The permit includes a provision clarifying that what is meant by negligible changes; changes to land use of less than one acre of impervious cover.

During the 18 month review process, participants asked that NYSDEC's approach to determining compliance determinations for MS4s collaborating to satisfy load reduction requirements. To answer this request, the permit allows for 'bubble' compliance with load reductions to a watershed, whereby MS4s may be credited for reductions without being restricted to areas within municipal boundaries.

Additions and clarifications to specific MCMs

MCM 2 – Public Involvement/Participation

The permit includes a clarification allowing the public to participate in development and implementation of SWMPs.

MCM 4 – Construction Site Stormwater Runoff Control

Several MS4 participants to the 18 month review process reported confusion created when NYSDEC allow for a construction project to be terminated from coverage under construction permit requirements. Those participants asked that, prior to sites being terminated under the construction stormwater permit, regulated MS4s be allowed to sign off on the projects. The construction permit includes such a requirement and a coordinated requirement for MS4s to accept notices of termination included in the MS4 permit.

MCM 5 – Post Construction Stormwater Management

Participants to the 18 month review process, as well as the conclusions of the 2008 National Research Council's report entitled Urban Stormwater Management in the United States, made clear that reduction of stormwater runoff is a key to successful stormwater program implementation. A great deal of runoff reduction can be achieved by implementation of Green Infrastructure practices. To facilitate implementation of Green Infrastructure practices, the permit includes requirements for:

- Training municipal officials in Green Infrastructure Practices

- Making consideration of Green Infrastructure part of normal municipal planning and law development processes.

Several participants also expressed concerns about meeting the no net increase requirements for impaired waters. To provide a tool that allows for meeting the no net increase, as well as achieving some reductions, the permit includes a provision for a Banking and Credit system that would allow for offsets from construction projects. Among other criteria for offsets, the offsets would be required to provide twice the pollutant reduction of standard practices.

MCM 6 – Pollution Prevention and Good Housekeeping

In addition to the requirements included in MCM 5 for runoff reduction, the MCM 6 includes a requirement the MS4 to incorporate runoff reduction into routine upgrades to stormwater conveyance systems and municipal properties.

Watershed Improvement Strategies

Additional Areas Added

Two additional maps have been added showing areas where Watershed Improvement Strategies must be implemented. One map is included to reflect EPA approval of the TMDL entitled “Shellfish Pathogen TMDL for 27 303(d)-Listed Waters”. A second map is included to reflect EPA approval of the TMDL entitled “TMDL for Phosphorus in Lake Oscawana”.

Numeric Pollutant Reductions

One of the issues raised by participants in the post issuance review process was the need to set numeric reductions in the permit for TMDL or reasonable potential areas. Toward that end, the renewal permit includes tabular reduction criteria by waterbody for each Watershed Improvement Strategy.

On-site Systems Requirements

Under requirements for on-site systems, the 2008 permit included provisions for on-site system inspection, maintenance and rehabilitation on a three year schedule. In the early implementation of this requirement in the East of Hudson Watershed, it appeared that the three year schedule would exceed the capacity of local on-site septic service providers. Through the same process, it was determined that the requirements should be clarified to make clear that the on-site requirements apply to the whole system, including the absorption area, not just the tanks. The permit language related to on-site systems has been revised to provide this clarification as well as to change the three year schedule to a five year schedule to make the requirement align with local service provider capacity.

Long Island On-site Systems

The renewal permit proposes to modify the requirements for on-site systems on Long Island to target on-site systems within effected storm sewersheds for inspection, maintenance and rehabilitation, rather than requirements for inspection, maintenance and rehabilitation for all septic systems within the effected storm sewersheds.

Properly designed, installed, and maintained on-site sanitary systems (septic systems, cesspools) generally pose little risk to humans, coastal resources, and surface water quality on Long Island. Most Long Island on-site sanitary systems are installed in areas with highly infiltrative soils and adequate depths to groundwater. However, in some places, such as coastal areas with slopes or low infiltrative soils, poorly functioning or improperly designed and maintained on-site sanitary systems can fail and result in the discharge of pollutants, such as bacteria (pathogens), to municipal separate storm sewers and surface waters. On Long Island, to prevent on-site sanitary system discharges to storm sewer systems, it is necessary to target areas where there is a reasonable likelihood of such discharges.

Under the MS4 permit municipalities must identify suspect areas within their jurisdiction, (such as areas with slopes, high groundwater, low infiltrative soils, older home construction, or pathogen impaired waterbodies) and to conduct regular field investigations/inspections in those areas of residential and commercial on-site sanitary systems to detect the presence of ongoing and/or intermittent on-site sanitary discharges.

Inspection of on-site systems in target areas, whether performed by municipal staff or by private inspectors, should be documented.