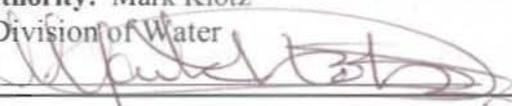


DOW – 1.2.5: New York State Stormwater Management Design Manual 2010 Update Transition Policy

New York State Department of Environmental Conservation, Division of Water

Division of Water Policy

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Signature: 

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*** NOTICE ***

This document has been developed to provide Department staff with guidance on how to ensure compliance with the statutory and regulatory requirements, including case law interpretations, and to provide consistent treatment of similar situations. This document may also be used by the public to gain technical guidance and insight regarding how Department staff may analyze an issue and factors in their consideration of particular facts and circumstances. This guidance document is not a fixed rule under the State Administrative Procedures Act subsection 102(2)(a)(I). Furthermore, nothing set forth herein prevents staff from varying from this guidance as the specific facts and circumstances may dictate, provided staff's actions comply with applicable statutory and regulatory requirements. This document does not create any enforceable rights for the benefit of any party.

I. Summary: This guidance clarifies the criteria an owner or operator of a construction project, subject to the requirements of the *SPDES General Permit for Stormwater Discharges from Construction Activity (GP-0-10-001)* ["CGP"], must meet in order to continue to use a Stormwater Pollution Prevention Plan ["SWPPP"] that was designed in conformance with the 2008 version of the New York State Stormwater Management Design Manual or its equivalent["Design Manual"].

II. Policy: The Department acknowledges that the 6 month transition period for construction projects to use the 2010 version of the Design Manual did not fully consider the economic impact to certain construction activities that had already started the planning, design and review process with another review authority. With consideration for the cost and environmental benefit provided by the 2008 version of the Design Manual, and consistent with past application of other new requirements in the CGP, construction activities that meet either one of the following may obtain CGP coverage with a final SWPPP prepared in

conformance with the 2008 version of the Design Manual or its equivalent (see “2008 Stormwater Management Design Manual” at <http://www.dec.ny.gov/chemical/29072.html>):

- Construction activities subject to local government subdivision or site plan review and approval requirements where the owner or operator made application to the local government for preliminary approval, or made application for final approval to a local government with no preliminary approval phase, prior to March 1, 2011 and the application included a preliminary¹SWPPP developed using the 2008 version of the Design Manual.
- Construction activities that are subject to governmental review and approval (other than those construction activities listed above) where the owner or operator made any application to that governmental entity prior to March 1, 2011 and the application included a preliminary SWPPP developed using the 2008 version of the Design Manual.

This guidance applies only to projects obtaining coverage under the CGP. Permit conditions and SWPPP requirements for projects authorized under an individual permit will be established based on the site specific conditions and the best professional judgment of the permit writer.

III. Purpose and Background: The purpose of this guidance is to clarify the criteria that construction activities, subject to the requirements of the CGP, must meet in order to continue to use a SWPPP designed using the 2008 version of the Design Manual or its equivalent.

Urban Stormwater Runoff has been noted as the major source of use impairment for one third of all impaired waters in New York State. In order to mitigate the water quality impacts of urbanization on receiving waters, construction activities that will ultimately disturb one or more acres must obtain coverage and comply with the requirements of the CGP. The CGP requires certain projects design and construct stormwater management practices that will

¹ Preliminary SWPPP is referenced in the CGP (Part II.B. Permit Authorization) as the level of detail needed for projects required to obtain UPA permits at the time of application for such permits.

mitigate the project water quality impacts after construction is completed. In accordance with the CGP, these stormwater management practices must be designed in conformance with the criteria in the Design Manual or its equivalent.

A revised version of the Design Manual was finalized and made available to the public on August 4, 2010. The updated Design Manual represents a substantial change in project design whereby post construction treatment practices must reduce the volume of runoff to mimic the pre-developed hydrology. Prior versions of the Design Manual required that post construction treatment practices provide treatment and rate control for specific storm events.

As per requirements in the CGP, an owner or operator of a regulated construction activity is required to begin using the new version (2010) of the Design Manual six (6) months from the final revision date; by March 1, 2011. However, the 6 month transition period did not fully consider the economic impact to projects that had already started the planning, design and review process with another review authority prior to March 1, 2011. Therefore, with consideration for the re-design cost and the fact that construction activities whose stormwater management practices designed in conformance with the previous version (2008) of the Design Manual, or its equivalent, are generally protective of the receiving water bodies, the Department is clarifying that such construction activities, as defined in the Policy section of this document, may obtain CGP coverage with a SWPPP prepared in conformance with the 2008 version of the Design Manual or its equivalent.

IV. Responsibility: Department staff responsible for the implementation of the CGP will update this guidance document, as necessary. The owners or operators of the project site are responsible for documenting that their construction activities are eligible to use the 2008 version of the Design Manual in developing their SWPPP, as outlined in this guidance document and incorporating such documentation into their SWPPPs. Municipalities authorized under the 2010 *SPDES General Permit for Municipally Owned Separate Storm Sewer Systems (MS4s) (GP-0-10-002)* are responsible for confirming that SWPPPs for such construction activities have included the documentation demonstrating that the project meets the criteria set forth in this guidance document.

V. Procedure:

Owner or Operator: When completing the Notice of Intent (NOI) for a construction activity that meets the criteria listed in this guidance document, an owner or operator must answer question 23 as “No” since the post-construction stormwater management practice component of the SWPPP has not been developed in conformance with the 2010 version of the Design Manual. As per Part III.B.2.d of the CGP, an owner or operator must also include the reason for this nonconformance and provide supporting information or documentation in the SWPPP. Such documentation could be in the form of planning board meeting minutes, letters acknowledging receipt of the application or other correspondence providing comments on the application. In addition, the owner or operator must indicate which of the criteria listed in this guidance document they meet when completing the NOI (use the space provided in question 39 of the NOI).

Department Staff: When processing the NOI for a construction project seeking coverage under the CGP with a SWPPP developed in conformance with the 2008 Design Manual or its equivalent, the Department will ensure that the owner or operator has answered question 23 as “No” and has indicated which of the criteria listed in this guidance document they meet in the space provided in Question 39. When reviewing the SWPPP, staff will confirm that the owner or operator has identified the reason for the nonconformance in the SWPPP and has included documentation supporting that the project complies with one of the criteria listed in this guidance document.

MS4s: When reviewing SWPPPs, the MS4 will confirm that the construction project meets the criteria for the nonconformance listed in this guidance document and the SWPPP has included the supporting documentation. When completing the MS4 Acceptance Form, under Section VI. Additional Information, the MS4 will note that the owner or operator has applied for preliminary or final approval prior to March 1, 2011 and that application included a preliminary SWPPP designed using the 2008 version of the Design Manual. The MS4 should also note that the final SWPPP for which the MS4 Acceptance Form is being submitted was reviewed for conformance with the 2008 version of the Design Manual or its equivalent.

VI. Related References:

- NYS Stormwater Management Design Manual (2008 and August 2010 versions). See <http://www.dec.ny.gov/chemical/29072.html> for both versions.
- SPDES General Permit for Stormwater Discharges from Construction Activity (GP-0-10-001)