



**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-0-08-001

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

April, 2008

Background

Pursuant to Section 402 of the Clean Water Act (“CWA”), stormwater discharges from certain construction activities are unlawful unless they are authorized by a NPDES (National Pollutant Discharge Elimination System) permit or by a state permit program. New York’s SPDES (State Pollutant Discharge Elimination System) is a NPDES-approved program with permits issued in accordance with the Environmental Conservation Law (“ECL”).

The SPDES General Permit for Stormwater Discharges from Construction Activity, GP-0-08-001, issued pursuant to Article 17, Titles 7, 8 and Article 70 of the ECL, will replace the current SPDES General Permit for Stormwater Discharges from Construction Activity, GP-02-01. An owner or operator may obtain coverage under this new general permit by submitting a Notice of Intent ("NOI") to the Department.

An owner or operator of a construction activity that is eligible for coverage under this general permit must obtain coverage prior to the commencement of construction activity. Activities that fit the definition of “construction activity”, as defined under 40 CFR 122.26(b)(14)(x) and (15)(i), constitute construction of a point source and therefore, pursuant to Article 17-0505 of the ECL, the owner or operator must have coverage under a SPDES permit prior to commencing construction activity. They can not wait until there is an actual discharge from the construction site to obtain permit coverage.

Introduction

The New York State Department of Environmental Conservation has prepared this responsiveness summary to address the comments that were received on the draft SPDES General Permit for Stormwater Discharges from Construction Activity, GP-0-08-001.

The draft general permit was published for public review and comment in the Environmental Notice Bulletin (ENB) on October 10, 2007. The Department provided a sixty (60) day comment period that ended on December 10, 2007. A list of the parties that commented on the draft general permit begins on page 3.

The responsiveness summary generally addresses all comments 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.

LISTING OF COMMENTERS

1	Yates Scoot Lansing	Lansing Engineering, PC
2	Nicholas Costa	L. Sipperly & Associates
3	David Simpson	D.S.B Engineers & Architects
4	Philip LaRocque	NYS Builders Association
5	Brendan Manning	General Building Contractors of NYS
6	Daniel Hershberg	Hershberg & Heershberg Consulting Engineers
7	Jeffrey Contelmo	Insite Engineering
8	Blue Neils	Cornell Cooperative Extension Saratoga County
9	Barbara Rivette	Onondaga County Health Dept.
10	Karen Morrison	Associated General Contractors of America
11	Jeffrey Gratz	US EPA Region 2
12	John Davis	Forever Wild Adirondack Council
13	William Morse	W-M Engineers
14	Mary Ann Coogan	Office of the Supervisor Town of Camillus
15	Richard Penhall	Village of Menands - Office of the Mayor
16	Brian Sampson	Builders Exchange of Rochester
17	Mary Crego	Town of Van Buren - Supervisors Office
18	Stephen Coleman	Westchester County Soil & Water Cons. District
19	John Dzialo	Town of Colonie Dept. of Public Works
20	Janet Thigpen	Southern Tier Central Regional Planning & Dev. Board
21	James Bacon	James Bryan Bacon Attorney & Counselor at Law
22	Robert Holmes	URS Corporation
23	Nicholas Pirro	County of Onondaga Office of the County Executive
24	Daniel Richmond	Zarin & Steinmetz
25	Avrum Golub	Avrum Golub, M..D.
26	Richard Williams	Town of Patterson Planning & Zoning Office
27	Michael Kelly	Dutchess County MS4 Coordination Committee
28	Joshua Carvajal	CPESC & CPSWQ
29	Tracy Miller	the LA group - Landscape Architecture and Engineering
30	Jane Blair	The State Education Dept./ Univ. of the State of NY
31	Thomas LaBombard	Thomas J. LaBombard, P.E.
32	Lawrence Paggi	Lawrence J. Paggi, P.E., PC
33	Bradley Grant	Fraser & Associates
34	Ken Barber	Barber Stormwater Management, Inc.
35	Mike Rossi	NYS DOT
36	John Dunkle	Dunn & Sgromo Engineers
37	Christopher Waite	NYS Thurway Authority
38	David Hanny	Barton & Loguidice, P.C.
39	Barbara Rivette	Onondaga County Health Dept.
40	Dan deRoos	Monroe County Soil & Water Conservation District
41	Eric Swenson	Hempstead Harbor Protection Committee
42	John Dunkle	Dunn & Sgromo Engineers
43	Charlie Green	American Society of Agriculture & Biological Engineers
44	Christina Zolezi	Fuss & O'Neill of New York, PC
45	Dick Davin	Conesus Lake Watershed

46	James Basile	Bergmann Associates
47	Dick Davin	Conesus Lake Watershed
48	Walter Keller	
49	Cesare Manfredi	Federated Conservationists of Westchester County
50	Nancy Tudor	
51	Jo-Anne Faulkner	
52	Rod Ives	Napierala Consulting Professional Engineer, PC
53	Kim Powell	Ecology & Environment, Inc.
54	John Bossalini	Amedore Homes
55	Rich Abbott	CPESC
56	Tom Piraino	Maple Tree Funding
57	John O'Brien	Resident - Town of Clifton Park
58	William Balestra	National Grid
59	Kathleen Bertuch	Central NY Regional Planning & Development Board
60	Julie Melancon	Christmas & Associates
61	Linda Von Der Heide	Rensselaer County Economic Development & Planning
62	Sarah Zemanick	Cornell Environmental Compliance & Subst. Office
63	Justin Baker	Stantec Consulting Services, Inc.
64	Bahi Elmiry	Consolidated Edison Company
65	Brian Whittaker	Codes/Zoning Enforcement Officer
66	Peter Vars	BME Associates
67	Joseph Heath	Joseph J. Heath Attorney At Law/Syracuse
68	David Johnson	Erosion Control/Stormwater Quality Specialist-Nuss Clarke
69	James Cornelius	WNY Stormwater Coalition / Town of Wheatfield
70	Ken Barber	Barber Stormwater Management
71	Mark Laramie	Oneida County Dept. of Public Works
72	Tom Tilebein	Stormwater Coalition of Monroe County
73	Barbara Moore	Village of Greenwood Lake NY
74	Deb Caraco	T.G. Miller PC Engineers and Surveyors
75	Mary Beth Murphy	Office of the Supervisor Town of Somers
76	Robert Liffland	Office of Board of Trustees Village of Pawling
77	Raymond Callanan	Town of Ballston
78	Nancy Heinzen	Albany County / Stormwater Program Coordinator
79	Ed Vergano	Town of Cortland / Dept. of Technical Services
80	KAPL comments	
81	Thomas Sims	Department of the Air Force
82	Joseph Ruggiero	Town of Wappinger / Dutchess County
83	John Becker	Town of Stillwater / County of Madison
84	Mary Ivey	State of New York Department of Transportation
85	Amanda Goad	The City of New York Law Department
86	Thomas Cesario	Engineer - Highway Engineer Div./ MCDOT
87	Drew Dillingham	Roux Engineers
88		Waterkeeper Alliance
89		Natural Resources Defense Council

Responsiveness Summary

Part I. PERMIT COVERAGE AND LIMITATIONS

A. Permit Application

Comment 1: We support the change to require a SWPPP for construction activities located in NYC Watershed East of the Hudson that disturb between 5000 SF and 1 acre of land. DEC should expand this requirement to include projects outside the watershed boundary within Westchester County. (18)

Response: Comment noted. However, the requirement in the draft general permit will protect the New York City water supply. An MS4 can always choose to regulate projects outside the watershed boundary using their local ordinances.

Comment 2: Part I.A.3 requires construction activities in the NYC Watershed East of the Hudson that disturb between 5000 SF and 1 acre of land to obtain permit coverage. The intent should be to ensure adequate E&SC for the construction of new single family homes, and therefore the minimum area should be increased to cover the typical area of soil disturbance associated with the construction of a single family home, or approximately 15,000 SF. (26)

Response: Comment noted. However, the 5000 SF threshold for needing permit coverage will provide greater protection of the New York City water supply. In addition, this was the permit threshold recommended by the nationally recognized experts in stormwater management, the Center For Watershed Protection (CWP).

Comment 3: The added cost to review all disturbances down to 5000 SF will adversely impact MS4s. (75)

Response: Comment noted. However, this requirement was one of the Center For Watershed Protection's key recommendations to improve water quality in the NYC East of Hudson watershed. The Department understands that the implementation of this SWMP modification may be costly, however, we feel an MS4 has viable options for implementing this program that can significantly reduce their costs. For example, the Department has been working on a model Inter-Municipal Agreement that will allow for MS4's to work together in complying with this requirement.

Comment 4: DEC should incorporate a specific exclusion from permit coverage for emergency response and other similar activities that disturb between 5000 SF and 1 acre. (37)

Response: Comment noted. However, the Department will continue to handle emergency response projects that may need permit coverage on a case by case basis.

Comment 5: The stated routine maintenance activity exclusion suggests that routine and normal utility facility maintenance activities are excluded, as long as the facility is to remain in use for transmission and distribution of electricity and natural gas. Since most of National Grid's system is more than 50 years old and some facilities have exceeded their design lives, our routine and normal maintenance work consists of substantial

rehabilitation, refurbishment and reconstruction of facilities. National Grid requests that DEC consider specifically applying this routine maintenance exclusion to such electric and natural gas facility work, particularly given that such projects involving protected waters and regulated wetlands are already covered by DEC's GP-98-01. (58)

Response: This type of construction activity (“work that consists of substantial rehabilitation, refurbishment and reconstruction of facilities”) does not meet the definition of routine maintenance. Therefore, no change has been made.

Comment 6: While it is important to ensure that no violations occur, and that waters of the State are protected, it would be valuable to place some time limit or provide guidelines to ensure that applicants realize which projects might need a permit pursuant to Part I.A.2. Currently, the applicant has no way of knowing if a permit will be required on sites with less than 1 acre disturbance, or if permanent controls may be required on sites that would normally require only E&SCs. (74)

Response: Comment noted. However, the need for permit coverage for a project with less than 1 acre disturbance should be handled on a case by case basis through consultation with the Department. Tables 1 and 2 in Appendix B can be used to determine which projects require permanent controls.

Comment 7: The GP should exempt from the term “construction activity” any tree cutting performed under the supervision of a Licensed Professional Forester that follows NYSDEC Timber Harvesting Guidelines since tree clearing would have no greater environmental impact than tree clearing performed for silvicultural purposes. Using this approach the DEC could still prohibit mechanical stumping, grubbing or grading. The GP should include a provision recognizing this practice (see comment), requiring adherence to NYSDEC Timber Harvesting Guidelines, and include federal facilities such as Ft. Drum as not being included in the coverage for the GP. ** (see other related comments from ARMY) (81)

Response: If the tree cutting is being performed as a precursor to development and does not meet the silviculture exemption, the owner or operator must obtain coverage under the general permit if the total disturbance will be one or more acres.

Comment 8: The GP specifically does not state that it regulates activities on the basis of their potential for a surface water discharge, although the state could have done that. The language of the GP does not purport to regulate all activities, but only those that do result in surface water discharges. The GP does not regulate tree clearing that does not result in discharges to surface waters. (81)

Response: If the owner can adequately demonstrate that there is no potential for a discharge from their tree clearing activity to surface waters or to a municipal separate storm sewer system that discharges to surface waters, they typically will not have to obtain coverage under the general permit. Discharges of stormwater to groundwaters are exempt from permitting requirements unless the Department determines that such discharges (or class of discharges) are significant contributors of pollution. To date, the Department has not determined that construction site discharges to groundwater are significant contributors of pollution.

In order to demonstrate that there is no potential for a discharge from a construction site, the owner must perform the necessary modeling and site assessments (soil testing, infiltration test,

hydrology, etc.) to support their position. The Department will require that this information be submitted for all construction sites we encounter that have not gained coverage under the general permit.

When making the demonstration that all discharges from the site would be to groundwater, the owner must consider each of the following:

- All phases of construction, including the commencement of soil disturbance with no post-construction controls in place.
- Runoff from all recorded storm events (1yr, 10 yr, 100 yr, etc.).
- Frozen ground conditions if soil disturbance is possible during periods when the ground is frozen.
- Changes in site topography resulting from grading operations (cuts and fills).

Comment 9: The permit needs to define "Routine Maintenance Activity" in terms of what types of activities DEC will actually allow as Routine Maintenance during project reviews. The definition of Routine Maintenance Activity in Appendix A is not consistent with prior DEC interpretation because there have been many activities conducted by NYSDOT during the last five years that meet the criteria of "construction activity that is performed to maintain the original line and grade, hydraulic capacity or original purpose of a facility" that have not been considered routine maintenance by DEC staff. In fact, one can contend that projects that meet DEC's definition of Redevelopment also meet the definition of Routine Maintenance Activity in the draft permit. If DEC is going to decide what activities are and are not routine maintenance on a case by case basis, regardless of the definition in the permit, then the permit should articulate this definition better in order to convey DEC's expectations. It is suggested that a list of acceptable maintenance activities be included in a table, similar to the tables in Appendix B that are used to describe what types of projects require erosion & sediment control plans vs. what types of projects require permanent stormwater management practices. (84)

Response: The Department has expanded on the definition of "Routine Maintenance Activity" to address this comment. The expanded definition includes examples of construction activities that meet this definition.

Comment 10: Part I.A.2 should clarify how and when the DEC may determine a permit is required for soil disturbance of less than 1 acre, and should provide examples. (85)

Response: The need for permit coverage for a project with less than 1 acre disturbance will be based on the potential for stormwater discharges from that construction activity to contribute to a violation of a water quality standard or to be a significant contributor of pollutants to surface waters of the State.

B. Maintaining Water Quality

Comment 11: Part I.B. should establish as a violation any activity that has the "reasonable potential to cause a violation" of a water quality standard. Regulatory agencies should not wait until the surface waters have already been degraded. (26)

Response: Reasonable potential is the standard that is used in development of Clean Water Act permits to determine when to apply water quality based effluent limits. The Department did

consider reasonable potential in drafting the stormwater permit and applied more stringent water quality based effluent limits in the form of the enhanced phosphorus removal standard.

Comment 12: There is a strong need for WQ standards for runoff from Brownfields and other contaminated sites. I understand that a construction and post-construction site runoff must not degrade a receiving water, there should be standards for the runoff in writing as a point of reference for new permits. (87)

Response: These sites are required to meet the water quality standards discussed in Part I.B. of the general permit.

Comment 13: Part I.B.1- I would at least consider the need to develop if necessary, and reference a turbidity differential between either background water turbidity and the runoff from the site, in NTU's, or relative differentials based on the water classification of the receiving water (i.e. trout streams would have a much lower background turbidity and could tolerate a much lower differential than a river in an urban area). (87)

Response: The existing water quality standards contained in Parts 700 through 705 do not include a single numeric limit for turbidity and none are proposed.

Comment 14: Add the following requirement to Part I.B. - There shall be no increase in process materials, such as solvents, as used in C.3 in Part I.C. (87)

Response: This requirement is already addressed by the existing language in Part I.B, therefore, no change has been made.

C. Eligibility Under This General Permit

Comment 15: Part I.C.3 should include road drains and curtain drains. (26)

Response: The Department has added “discharges of uncontaminated groundwater” to the list of non-stormwater discharges that may be authorized by the general permit. Discharges from road drains and curtain drains will fall under this category, provided the discharge consist of only uncontaminated groundwater.

Comment 16: Part I.C.3 should include sump pumps from single-family homes. (29)

Response: This type of discharge would fall under the “foundation or footing drains where flows are not contaminated with process materials such as solvents” category listed in this Part.

Comment 17: Part I.C.3 should be revised to include riparian habitats and wetlands in the list of eligible non-stormwater discharges. (53)

Response: Riparian habitats and wetlands are not considered non-stormwater discharges and were never included in Part I.C.3 of the general permit.

Comment 18: The new GP authorizes uncontaminated discharges from construction site dewatering operations so long as the quality standards in Part I.B are satisfied. The DEC should provide approved methods for dewatering discharges to waters of the state in permit guidance documents. (64)

Response: The New York Standards and Specifications For Erosion and Sediment Control includes practices that address dewatering operations. For example, see page 5A.47, Standard and

Specifications for Portable Sediment Tank and page 5A.35, Standard and Specifications for Sediment Trap.

Comment 19: The term “process materials” as used in this context imply possible remedial activities. “Process materials” should be defined in Appendix A. (87)

Response: This language was taken from the EPA’s general permit. Clarification on the meaning of process materials would be best found in EPA permit guidance.

D. Activities Which Are Ineligible for Coverage Under This General Permit

Comment 20: USDA Soil Surveys are frequently out of date or inaccurate at the project site scale, or, in our situation, show an area as unmapped. There should be a process for using other data if the survey data doesn’t exist or does not reflect reality. (62)

Response: The Department will handle these sites on a case by case basis. An owner that is proposing to disturb soils that are tributary to waters of the state classified as AA or AA-s, where the USDA Soil Survey map shows the project area as unmapped, must contact the Department for a determination on which permit process will be used to authorize stormwater discharges from their site.

Comment 21: The word ‘not’ seems to be missing between the words ‘have’ and ‘made’ at the beginning of the sentence in Part I. D. 8. b.. (62), (74)

Response: The language in the draft permit is correct. It is the Department’s intent to provide a “grandfather” period where projects that have submitted for other governmental approvals prior to January 8, 2008 will have until June 30, 2009 to complete the SWPPP review process with the other governmental entities and file an NOI with the Department to gain coverage under the general permit, provided they meet all other provisions of this section.

Comment 22: Paragraph D.1 of Part I indicates that discharges after construction activities have been completed and the site has undergone final stabilization are not eligible for coverage under the GP. How is a discharge from a post-construction SMP permitted once construction is complete? (52)

Response: The SPDES General Permit for Stormwater Discharges from Construction Activity authorizes during construction discharges. Discharges from a post-construction SMP are typically not required to be authorized under a SPDES permit. Once construction has been completed and all areas of disturbance have been stabilized in accordance with the general permit, the owner or operator can file an Notice of Termination (NOT) with the Department and terminate coverage under the general permit.

Comment 23: Permit language that states how one can get an Individual SPDES permit should be added to this section. (29)

Response: Information on obtaining an Individual SPDES permit is located on the following webpage <http://www.dec.ny.gov/permits/6054.html>. In addition, an owner or operator can contact the Division of Environmental Permits in the region where their project is located to obtain information on how to apply for an Individual SPDES permit.

Comment 24: More precise language than “tributary to” is needed in defining the location where a project is subject to the individual SPDES permit requirement. (39)

Response: The Department had developed a map which shows the areas that are “tributary to waters of the state classified as AA and AA-s”. A paper version of this map was included in the draft general permit. In response to comments received during the public comment period, the Department is updating this map to address some inconsistencies. Because of these mapping changes, the paper version of the map has been removed from Appendix E in the final permit. Instead, the Department will be updating the Interactive Stormwater Map on our website to include these Watershed Areas as a new layer. The Interactive Stormwater Map includes a tool which allows an owner or operator to zoom to their project site.

Comment 25: Does the entire project need to be in a AA watershed for this requirement to apply? Are projects that discharge to a AA trib subject to this requirement? (40)

Response: No, if a portion of the project is located in an AA watershed area as shown on the map, and that portion of the project will involve the disturbance of one or more acres of land (two or more acres for a roadway or linear utility project) with no existing impervious cover and where the Soil Slope Phase is identified as an E or F on the USDA Soil Survey, the project will be subject to this requirement provided the other provisions of this Part also apply. With regards to the second question, only those projects located within the AA watershed areas shown on the map are subject to this requirement, provided the other provisions of this Part also apply.

Comment 26: The permit should make the applicability of this provision clear, through language such as “ultimately tributary” and, more importantly, through maps designating the areas where the provision applies. (85)

Response: See responses to Comments 24 and 25.

Comment 27: The permit should clarify what procedure, if any, should be followed if information gathered from a site specific topographic survey contradicts a USDA or county generated Soil Survey map. If a direct site evaluation indicates that E or F slopes will be disturbed, an individual permit should be required. (85)

Response: The Department will typically just require an owner to use the USDA Soil Survey maps to determine slope because that will allow for this provision to be implemented on a more consistent basis. In addition, these maps are readily available to all parties that may be involved with the construction activity.

Comment 28: The 25% slope requirement seems excessively restrictive. We would propose a slope requirement for Phase E or F in AA or AA-s tributary areas of 30% and steeper. (10)

Response: Comment noted. However, the Department feels that the 25% slope threshold will provide for greater protection of these sensitive waterbodies.

Comment 29: DEC should replace the language in Part I.D.4 with EPA CCG language regarding endangered or threatened species, or its critical habitat. DEC should add new paragraphs addressing “Historic Properties Preservation” and “New Discharges to Water Quality Impaired Waters”. (11)

Response: The Department prefers to use the existing endangered species act language. DEC has added language on historic properties preservation that reflects requirements that already apply to

applicants. The permit also includes requirements for new discharges to water quality impaired waters.

Comment 30: Is the area of disturbance disqualifying an individual from obtaining coverage under the GP a full one acre of disturbance (two acres for linear utility and public roadway) of Slope Phase E or F, or is the area of disturbance one acre which contains a portion of a slope Phase E or F. (26), (37), (38)

Response: An owner will be ineligible to obtain coverage under the general permit if their project involves a full one acre of disturbance (two acres for linear utility and public roadway) of land area classified as Slope Phase E or F on the soil survey.

Comment 31: To be ineligible for coverage under the GP do all three conditions have to apply or any one under 7 and 8. This section is confusing and should be rewritten. Are any construction activities that start a governmental review process after January 8, 2008 going to be covered under the GP? (33), (52)

Response: Yes, all three conditions have to be met under the applicable section (7, 8 and 9) in order for this provision to apply. See response to Comment 21 for an answer to the second question in this comment.

Comment 32: It is unclear from the information provided what areas are designated and what areas are not. Additional detail must be added to the Map in Appendix E or an interactive map should be provided on the DEC's website to clarify and simplify the identification of the areas specified in this section. (27)

Response: The Department will be updating the Interactive Stormwater Map on our website to include these Watershed Areas as a new layer. The Interactive Stormwater Map includes a tool which allows an owner or operator to zoom to their project site.

Comment 33: Provide clarification on what "1 acre of no existing impervious cover" means. If a road is included in the project then some is impervious cover. (40)

Response: The Department included this language in the general permit to account for proposed developments on land areas that were previously disturbed but stabilized with some type of vegetation. For example, ski slopes.

Comment 34: There are numerous types of projects that are not eligible for coverage under this General Permit and will need to apply for an Individual SPDES Permit. At this time the Individual SPDES Permit is not conducive to use for stormwater and should be revised. Another option would be to create a separate general permit for these specific types of projects. (29)

Response: Comment noted. However, the Department feels that having an owner apply for an individual SPDES Permit is the best way to handle the permitting of this type of project. By using an individual SPDES Permit, the Department can include site specific, heightened permit requirements to address the disturbance of land areas with steep slopes.

Comment 35: Discouraging development on steep slopes in sensitive watershed is a logical objective and the criteria used to establish the thresholds for individual permits are reasonable. However, it is likely this will result in more individual SPDES permit request.

Will DEC staff be prepared to handle the additional work. (36)

Response: The Department is prepared to handle this additional workload.

Comment 36: National Grid requests that the SPDES GP continue to be applicable to linear utility projects that meet the criteria of Part I.D.9.. Based on the limited disturbances that occur within the typical ROW and on the use of E&SC, we feel that an individual SPDES permit is not appropriate for such work. (58)

Response: Comment noted. However, the Department intends to apply this requirement to all sites that meet criteria in Part I.D.9.

Comment 37: Public roadway and linear utility projects not permitted by June 29, 2009 (among other criteria) are ineligible for coverage under this permit. How is coverage obtained for projects after this date. (69)

Response: This provision only applies to projects that “are tributary to waters of the State classified as AA or AA-s and disturb two or more acres of land with no existing impervious cover and where the Soil Slope Phase is identified as an E or F on the USDA Soil Survey”. See response to Comment 31 also.

Comment 38: Part I.D.7 -9. - Topography should be used instead of soils data where available to define steep slopes. (74)

Response: See response to Comment 27.

Comment 39: Part I.D.7 &8 describes construction activities ineligible for coverage under the GP and uses the term “residential, commercial and institutional projects” There is no definition of “institutional”, and therefore it is unclear if army projects are included. Please clarify. (81)

Response: The Department considers Army complexes to be institutional type facilities, therefore, they are subject to this requirement. In addition, this requirement will also apply to any residential construction projects the Army proposes.

Comment 40: Part I.D.8.a. - August 1, 2003 was the deadline for GP-02-01 to transition from GP-98-06. Why is so much time allowed from the change from one permit to another? (87)

Response: The Department chose a longer time period in the new general permit to allow more owners or operators to learn about the new provisions. See response to Comment 21 also.

Part II. OBTAINING PERMIT COVERAGE

A. Notice of Intent (NOI) Submittal

Comment 41: SWPPP’s that require stormwater treatment and attenuation should be reviewed by licensed PE. This PE, whether town engineer or contract engineer, should also have received DEC endorsed training.

Response: The Department has decided not to make this a requirement in the general permit for construction activity.

Comment 42: If town engineer notifies a project designer that SWPPP is deficient and then project designer goes to DEC Regional Office for their opinion and gets Regional sign-off, will DEC have overruling authority?

Response: January 8, 2008 marks the time when the regulated, traditional land use controls MS4s will take the lead in the review and acceptance of the SWPPPs. Therefore, these projects typically will not be reviewed by the Department. The Department will be reviewing a representative sampling of SWPPPs that were reviewed by the MS4 as an oversight function. Generally, that review will be after the MS4's review is complete. The Department will typically just be reviewing the Notice of Intent (NOI) and making sure the "MS4 SWPPP Acceptance" form has been signed by the appropriate person and submitted along with the NOI. Beginning on September 30, 2008, an owner or operator must submit a completed and signed MS4 SWPPP Acceptance form along with their NOI to gain coverage under the new general permit.

Comment 43: Part II.A.2 requires each SWPPP Acceptance Form to be signed by a ranking elected official, ..., without regard to that person's technical expertise. This provision should be revised to ensure that SWPPPs are reviewed and approved by appropriately qualified people. (85)

Response: The language in this section is only indicating that a ranking elected official, or a duly authorized representative of that person, must sign the MS4 SWPPP Acceptance form, not perform the review of the SWPPP. The qualifications of the person reviewing the SWPPP are governed by the requirements in the MS4 permit. For instance, there is language in the draft MS4 permit that requires a "Qualified Professional" to review SWPPPs that include post-construction stormwater management practices. The definition of "Qualified Professional" is the same as provided in the draft construction permit. The draft MS4 permit also requires individuals performing reviews of SWPPPs that include just erosion and sediment controls to be adequately trained in sediment and erosion control requirements.

Comment 44: What is the process for a plan that is approved by an MS4, but later rejected by DEC upon later review. (74)

Response: See response to comment 42.

Comment 45: Many MS4s are not ready to take on this task of reviewing SWPPPs. There are concerns over delays in project review and approval at local level. A relief mechanism or default time frame should be placed on this procedure. (58)

Response: The Department does not have the authority to regulate the time frames a regulated, traditional use control MS4 establishes as part of their local review and approval process. However, the Department will continue to be a resource to the MS4s and their consultants if they encounter questions that need to be addressed in order for them to complete their review.

Comment 46: Define "review and accepted". Does the MS4 need to perform a full technical review of the SWPPP or just a completeness review? Is "acceptance" substantive (meaning approval) or administrative (meaning the application is deemed complete and okay for submittal to the state)? (40), (41)

Response: The MS4 shall perform a full technical review of the SWPPP. The term "acceptance" means the MS4's review has determined that the SWPPP complies with the requirements of their local ordinance, including the technical standards.

Comment 47: Please provide clarification as to what role, if any, the DEC will perform in detecting and enforcing the provisions of these permits and what roles the MS4s will play in such actions. (41)

Response: For construction activities subject to the requirements of a regulated, traditional land use control MS4, the MS4 will take the lead in the review and approval of SWPPPs, site inspections to determine permit compliance and enforcement actions. However, the Department also has the authority to perform compliance inspections and take enforcement actions.

Comment 48: MS4s are already required to review a SWPPP as part of their site plan review process in relation to the law, local environmental conditions and utilization of the State's technical standards. The "MS4 SWPPP Acceptance" form would more appropriate as a "MS4 SWPPP Review" form which could simply state that the MS4 has reviewed the SWPPP as part of their site plan process. (29)

Response: See response to Comment 46.

Comment 49: Include a provision that places a time limit on the MS4's review of the SWPPP, say 45 days.

Response: See response to Comment 45.

Comment 50: The requirement of developers to file an "MS4 SWPPP Acceptance Form" along with their NOI to obtain permit coverage is troublesome. Municipal attorneys should have the ability to review and approve the form before it is finalized to ensure there are no liability issues, yet it has not been released for review. (14)

Response: The Department has included language in the general permit that will give an owner or operator until September 30, 2008 to start submitting this form. The Department will make this form available for review on our website during this period.

Comment 51: Can this same authority to review SWPPPs be extended to non-regulated MS4s that have a stormwater ordinance/program reviewed and accepted by the DEC. (74)

Response: No, not unless the non-regulated MS4 files an NOI with the Department to gain coverage under the MS4 permit. The MS4 would then be required to meet the requirements of minimum measures 4 and 5 of the MS4 permit.

Comment 52: Placing the authority with the "principal executive officer or ranking elected official" may politicize SWPPP approval. Could both review of the SWPPP and signature of the form be by a qualified individual. (74)

Response: The Department feels the requirements for SWPPP review and signature of the MS4 SWPPP Acceptance form are appropriate, therefore, no change has been made. Please note that the permit does allow the principal executive officer or ranking elected official to authorize a representative of the MS4 to sign the MS4 SWPPP Acceptance form. For example, they could authorize the town engineer that is reviewing the SWPPPs.

Comment 53: We have not seen a copy of what the "MS4 SWPPP Acceptance" form will look like; it is difficult to properly evaluate how effective or standardized this process will be. (38)

Response: See responses to Comments 46 and 50.

Comment 54: Provisions should be incorporated into the permit stating that where a non-traditional MS4 is proposing a construction activity that is not subject to local review , there is no need to submit a “MS4 SWPPP Acceptance” form along with the NOI. (37)

Response: This issue has been addressed by the following language (see underlined)“An owner or operator of a construction activity that is subject to the requirements of a regulated...”. Therefore, no revisions are necessary.

Comment 55: The language in Part II.A.2 needs clarification to make it clear who is submitting the “MS4 SWPPP Acceptance” form, the MS4 official or owner/operator. (33)

Response: The permit requires the owner or operator to submit the “MS4 SWPPP Acceptance” form to the Department with the NOI. The Department feels this language is clear, therefore, no change has been made.

Comment 56: The “MS4 SWPPP Acceptance” form should include qualifying language that identifies that a SWPPP is a plan that usually evolves and may require flexibility and modification. “No exception taken” is preferable to accepted and/or approved. (33)

Response: SWPPPs are expected to be dynamic in that they may be modified to address erosion and sediment control needs at a site that were not foreseen in development of the initial SWPPP. However, changes to the core post construction design features may not be altered or areas of disturbance increased without resubmitting the plan for review and submitting a revised NOI.

Comment 57: DEC should require additional training for individuals reviewing SWPPPs to ensure consistency among the reviewers. (26)

Response: See response to Comment 41.

Comment 58: DEC should develop MS4 SWPPP review standards as part of the permit to ensure uniform application amongst MS4s. The permit should also include time and fee limits for any such MS4 SWPPP review as well as criteria for establishing qualifications for reviewers. Each MS4 should be approved by the DEC before they are given authority to review SWPPPs. Inappropriate review procedures by an MS4 should jeopardize their ability to maintain coverage under the MS4 permit. Applicants should have the opportunity to request a DEC review, if there are concerns with a particular MS4. (36)

Response: The Department does not have the authority to regulate the time frames a regulated, traditional use control MS4 establishes as part of their local review and approval process or the fees that they may charge. However, the Department will continue to be a resource to the MS4s and their consultants if they encounter questions that need to be addressed in order for them to complete their review.

Comment 59: MS4 liability should be limited to a review of the completeness of the SWPPP, not an endorsement of any practices proposed by the applicant. (36)

Response: See response to Comment 46.

Comment 60: Will the MS4 be required to review the SWPPP and issue an MS4 SWPPP Acceptance form when an individual SPDES permit is required, such as under Part I.D.8. (26)

Response: No, the requirement for an MS4 to review the SWPPP and issue an MS4 SWPPP Acceptance form only applies to projects that will be authorized to discharge under the General

Permit for Construction Activity.

Comment 61: MS4s that sign-off on a SWPPP that deviates from the technical standards will be in direct conflict with the local laws governing stormwater management and E&SC recently adopted by many regulated MS4s, in accordance with the “NYSDEC Model Local Law”. There are also concerns with potential abuse of the loophole being proposed by allowing MS4s to sign-off on SWPPPs that deviate from DEC’s technical standards. If this permit requirement stands, the DEC should consider modifying the Design Manual to include specific guidance on situations where non-conforming designs and technologies could be considered. Additionally, it would be helpful for DEC to add currently non-conforming technologies and designs which are commonly proposed and approved by DEC to the Design Manual as a way to reduce the number of non-conforming project approvals. (27)

Response: To address this concern, the Department recommends that MS4s update their local law by adding the following language to “Section 3. Performance and Design Criteria for Stormwater Management and Erosion and Sediment Control” of the original model law:

“3.2 Equivalence To Technical Standards

Where stormwater management practices are not designed in accordance with the technical standards referenced in Article 2, Section 3.1, the applicant or developer must demonstrate equivalence to these technical standards and the SWPPP shall be prepared by a licensed professional.”

With regards to the second part of this comment, the Department will consider adding some additional stormwater management practices to the Design Manual the next time it is updated.

Comment 62: For Traditional Land Use Control (TLUC) MS4s requires that the owner or operator of a construction site submit a “MS4 SWPPP Acceptance” form signed by the appropriate representative of the MS4. Traditional Non-Land Use Control (TNLUC) and Non-Traditional (NT) MS4s are not addressed. Any special requirements for those entities. (69)

Response: There are no special requirements planned for the Traditional Non-Land Use Control (TNLUC) and Non-Traditional (NT) MS4s in the construction permit at this time. The owner or operator of a project in a Traditional Non-Land Use Control (TNLUC) MS4 or Non-Traditional (NT) MS4 will be required to file just the Notice of Intent (NOI) with the Department to gain coverage under the Department’s construction general permit.

Comment 63: The Department has provided a streamlined process for construction activities subject to the requirements of a traditional land use MS4 to gain permit coverage in 5 business days, but has not provided an equivalent process for construction activities subject to the requirements of a non-traditional MS4. It appears the intent is to provide programs that have comparable, if not equivalent requirements for both traditional and non-traditional MS4s. Therefore, non-traditional MS4s should be granted the same SWPPP review authority as traditional MS4s, since they are held to the same SWPPP compliance requirements. As such, KAPL recommends the Department provide an equivalent streamlined submittal process for SWPPPs and NOIs from non-traditional MS4s. (80)

Response: See response to comment 62.

Comment 64: DEC should provide additional guidance to MS4s on how to sign-off on designs that have been prepared using the DEC Stormwater Credits document. (27)

Response: The Department will continue to be a resource to the MS4s and their consultants if they encounter questions that need to be addressed in order for them to complete their review.

Comment 65: DEC should continue to be part of the process to approve SWPPPs that deviate from the technical standards. Owner or operators of projects with SWPPPs that deviate from the technical standards should be required to obtain either the MS4 acceptance form or 60 day review, at the discretion of the MS4. (27), (51)

Response: Comment noted. However, the Department has decided not to make this change. See response to Comment 64.

Comment 66: The Town does not believe that approving a SWPPP that deviates from the technical standards should be the purview of the MS4. There are many instances where site conditions do not allow for a SWPPP preparer to follow the technical standards, thereby potentially increasing runoff from the site or providing substandard treatment of runoff. There is a potential liability for the MS4 if a project is approved by them that does not meet the DEC's technical standards. It is unclear whether DEC or an entity can seek action against an MS4 approving projects that deviate from technical standards. If Ballston is required to uphold DEC's technical standards, no projects seeking approval will be granted waivers from technical standards. The potential liability is too significant to undertake. (77)

Response: Comment noted. The Department will continue to be a resource to the MS4s and their consultants if they encounter questions that need to be addressed in order for them to complete their review.

Comment 67: Many municipalities are requiring that an NOI Acknowledgment letter be submitted to DEC as part of the site plan/subdivision approval process. Sometimes this is required many months, if not years, before a project goes into the construction phase. In some cases projects never reach the construction phase. The timing of submitting an NOI to the DEC should clearly be defined so that there isn't any unnecessary permitting of the project. (29)

Response: The Department has revised the language in Part II.B. to address this comment. See responses to Comments 73 and 74 also.

Comment 68: The actual jurisdictional boundaries of the various MS4s are unclear on the Interactive Map. Other than the interactive map, where would one go to determine if a project falls within an MS4. If a project falls within multiple MS4 jurisdictions, would a SWPPP need to be submitted to each affected MS4. Would a separate SWPPP need to be developed for each MS4. What is the process for gaining coverage if a project were to fall within multiple MS4s and a portion of the corridor falls outside any other MS4. Has an MS4 SWPPP Acceptance been developed and is it available. (58)

Response: The only tool available at this time to view the boundaries of an MS4 is the Department's Stormwater Interactive Map. This map includes a "Zoom In" tool that allows one to view the MS4 boundaries at different scales. If a project falls within multiple jurisdictions, the owner or operator will be required to submit the SWPPP to all of the regulated, traditional land use control MS4s for review. The general permit requires the owner to develop one SWPPP that

addresses the entire construction project. The owner is only required to submit their SWPPP to the regulated, traditional land use control MS4(s) where their project is located, provided the construction activity is subject to the land use control requirements of the MS4. The MS4 SWPPP Acceptance form will be available at the time the general permit is issued. However, an owner or operator will not be required to submit the form along with their NOI until September 30, 2008. See response to Comment 50 also.

Comment 69: A certification by a licensed preparer that the SWPPP has been developed to ensure compliance with all Federal, State and local water quality standards should be required and should be accepted in lieu of the MS4 SWPPP Acceptance form. (64)

Response: Comment noted. However the Department has decided not to make this change.

Comment 70: It seems as though the Department is attempting to shed all enforcement and administration to the local level. This is becoming exactly the type of program which wields the double edge sword of increasing local property taxes and increasing the cost of development, while likely doing little to actually improve water quality. (65)

Response: Even though January 8, 2008 marks the time when the regulated, traditional land use controls MS4s will take the lead in the review and acceptance of the SWPPPs, the owners of these construction projects are still required to gain coverage under the Department's general permit. Therefore, the Department will always have the authority to take an enforcement action against any owner of a construction activity that either causes or contributes to a violation of the water quality standards.

B. Permit Authorization

Comment 71: Part II.B.2 requires that an NOI be submitted at the time all other UPA permit applications are submitted to the DEC. It is typically beneficial for the designer to submit applications and preliminary plans to the multiple agencies that will be reviewing and approving a project in order to obtain comments on the design. SWPPPs are usually addressed towards the later phase in the design of a construction activity. Requiring an NOI to be submitted with all other UPA permit applications means that the local municipality will have needed to complete their review of the project and issue a MS4 SWPPP Acceptance Form prior to submission of UPA applications. Rather than the NOI being submitted with the UPA permit applications, a letter from the local municipality acknowledging their intent to review the SWPPP would suffice, thereby permitting the application to undertake a more coordinated review by multiple agencies. Another comment suggest that this sentence be replaced with "NOIs must be submitted on or after the time that other UPA permit applications are submitted." (26), (84)

Response: The Department has revised this section of the permit to address this concern.

Comment 72: The GP seems to penalize owners who prepare SWPPP's that deviate from the DEC's technical standards. The technical standards should be used only for a guideline and not a requirement to be met. Many, if not most sites, can meet or exceed the intent of the permit by not strictly adhering to all the items required by the technical guidelines. These designers are punished by a 60 day review period. DEC should consider reducing the review period to a more reasonable time, perhaps 30 calendar days. Or put a requirement in the

permit that will allow the owner to begin after DEC has completed their review of the SWPPP. (46)

Response: Comment noted. However, SWPPPs that have not been developed in conformance with the technical standards often require more time for review by Regional office stormwater staff. Therefore, the Department has decided not to make this change.

Comment 73: The language in Part II.B.1.a.i indicates that the SWPPP will be submitted with the NOI to the DEC. However, the language in Part III.A.1 indicates that only the NOI should be submitted. Please clarify. (51)

Response: Typically, just the Notice of Intent (NOI) needs to be submitted to the Department. However, if the project requires other permits subject to the Uniform Procedures Act (UPA), the owner or operator shall submit the preliminary SWPPP to the appropriate DEC Regional Office at the time all other UPA permit applications are submitted. For construction activities that are not subject to the requirements of a regulated, traditional land use control MS4, if the NOI for the project indicates that the SWPPP has not been developed in conformance with the Department's technical standards, the letter of NOI Acknowledgment will request the owner to submit the SWPPP to the appropriate Regional Office.

Comment 74: Please clarify whether or not an operator needs the permit in hand to begin construction. The permit language indicates that the authorization to commence construction would begin 5 days after DEC receives the NOI/SWPPP from the operator. However, Part B.2 indicates that the operator must wait until all permits have been received. (51)

Response: Pursuant to Part II.B.1 and 2, an owner or operator shall not commence construction activity until their authorization to discharge under the general permit goes into effect, and project review pursuant to the State Environmental Quality Review Act (SEQRA) has been satisfied, and where required, all necessary Department permits subject to review and decision making pursuant to the Uniform Procedures Act (UPA) have been obtained.

Comment 75: Part II.B.4 indicates that any new disturbed areas not originally covered by the project NOI and SWPPP can no longer be just added to the SWPPP by addendum. Another NOI must be submitted to add the new areas. The inclusion of this new clarification has a bearing on many of National Grid's reconstruction projects, including its Priority Pole Replacement projects, where selected/isolated segments within the corridor were used to gain SPDES coverage without covering the entire project corridor with formal SPDES GP related requirements. In lieu of having to submit additional NOI's, National Grid would prefer to apply one NOI to an entire project, consistent with the definition of larger common plan. (58)

Response: The NOI submitted to the Department should be representative of the total project that is planned for construction. See responses to Comments 124, 125 and 268 also.

Comment 76: It is unclear from the language in Part II.B.1.a.ii. whether this applies where DEC has made a determination that a SWPPP does not conform with the technical standards, or only where the owner has indicated nonconformance with technical standards on the NOI. (85)

Response: This provision applies where the owner or operator has indicated in their Notice of Intent (NOI) that their SWPPP has not been developed in conformance with the Department's technical standards.

Comment 77: Part II.B.1.ii: Suggest adding to the end of the sentence “... in Parts III.B.1,2 or 3” the language “,unless notified differently by the Department, pursuant to item #3 of this Section.” (86)

Response: Comment noted. However, the Department does not feel this revision is necessary.

Comment 78: Part II.B.4. - DEC should change NOI to include provision for staged construction or for remediation where the total number of future impermeable acres is not known. I have many projects where we are demolishing or cleaning a site up and we don't know the final configuration of the new or redeveloped site. The current NOI is not really formatted to handle this situation. (87)

Response: For projects that involve just demolition or remediation where the final site development plan has not been determined, the owner should submit an NOI that addresses just that phase of construction. Once the final site development plan has been completed, the owner must submit another NOI to address that phase of construction. Owners are reminded that there may be other review authorities (e.g. local government) that may not allow for any construction to commence, including demolition, until the project has received final approval for the planned development.

C. General Requirements For Owners or Operators With Permit Coverage

Comment 79: Part II.C.3 limits disturbance to 5 acres at any one time without written authorization from the DEC. The 5 acre limit seems to be somewhat arbitrary and is in most cases impractical. If DEC is concerned with these sites, the permit should require the operator to have their SWPPP reviewed by the DEC at that time. (46)

Response: The restriction on opening up greater than 5 acres at any one time has been in place since August 1, 1993 when the Phase I permit was first developed. The Department will continue to require the owner of a construction project that wishes to disturb greater than 5 acres at any one time to obtain prior written authorization from the Department, or in areas under the jurisdiction of a regulated, traditional land use control MS4, from the MS4.

Comment 80: The permit should make it clear in Part II.C.3.a. that, in instances where a regulated MS4 is the owner of a construction project, the MS4 may not issue a 5 acre disturbance waiver for its own construction activity but must instead seek a waiver from the DEC. (85)

Response: The Department has added language to the general permit to address this concern.

Comment 81: DEC should evaluate projects that wish to disturb greater than 5 acres between Nov. 1 and March 1 on a case by case basis. For some sites, it is better to open up greater than 5 acres during winter months. Some sites downstate are still breaking ground throughout the year. Construction in excess of 5 acres at any one time should be permitted year around. (33), (35)

Response: The Department has removed the provision that limits an owner or operator from disturbing greater than 5 acres at any one time between November 1 and March 1. Owner's of projects that wish to disturb greater than 5 acres at any one time during this period will instead be required to receive prior written authorization from the Department or, in areas under the jurisdiction of a regulated, traditional land use control MS4, from the MS4.

Comment 82: The new permit includes requirements that must be met for disturbances of greater than 5 acres at any one time, including increased inspections to twice per week and soil stabilization within 7 days. While all these aspects will increase the difficulty of planning and scheduling complex projects, the latter is particularly problematic from a planning standpoint. The need to disturb greater than 5 acres at once usually stems from the fact that it is not feasible to immediately stabilize the area in the first place. We recommend that the 7 day requirement for temporary stabilization be changed to 14 days. (38)

Response: The New York Standards and Specifications for Erosion and Sediment Control includes several temporary stabilization measures that can be applied to exposed soil at any point in disturbance process to provide temporary stabilization of an area. Therefore, no change has been made.

Comment 83: Although landfills are covered under the Multi-Sector permit, they are still required to abide by all standards of the Construction Permit. Landfill operators cannot possibly ensure less than 5 acres are disturbed at any one time during winter months. In other types of projects, such as linear utility and transportation projects, multiple individual small areas of disturbance within the same project often exist simultaneously at locations that may be significant distance apart. Cumulatively, these areas may add up to more than 5 acres but present no significant E&SC challenges. For these reasons, we request that the seasonal restriction for authorization of greater than 5 acres be removed altogether, as long as E&SC plans have been approved by NYSDEC. (38)

Response: See response to Comment 81.

Comment 84: DEC should establish a maximum disturbance area (50 acres?), with anything greater requiring an individual SPDES permit. (36)

Response: Comment noted. However, the Department has decided not to make this change.

Comment 85: The requirements in the draft permit for disturbing greater than 5 acres at any one time may be appropriate, but this criteria should be determined on a case by case basis. The requirements should not be automatically applied to each site. (22), (34)

Response: The Department feels that these standard requirements should automatically apply to all sites where the owner plans to disturb greater than 5 acres at any one time. This will help to ensure that the authorization to disturb greater than 5 acres at any one time is applied to each site on a more uniform basis. Even though the Department is requiring these standard requirements be included in the SWPPP, the Department, or a regulated, traditional land use control MS4, will still be reviewing each request to disturb greater than 5 acres at any one time on a case by case basis.

Comment 86: Given the time frame that the Indiana bat is in hibernation, the prohibition against disturbing greater than 5 acres at any one time between Nov. 1 and March 1 means that tree clearing must be done during a limited window of time in October, which statistically is the wettest month, thus increasing the chance for a discharge to the surface waters, or during March April when there is a greater chance of snow melt and an increase chance for a discharge to the surface waters. (81)

Response: See response to Comment 81.

Comment 87: Please define the time frame that “temporarily” outlines in Part II.C.3.b. (72)

Response: The term “temporarily”, as used in this section, means the phase of soil disturbance activity, not a time frame. In other words, if an area has been rough graded (versus final graded) and soil disturbance activity in that area will not resume within seven (7) days, the owner must ensure that temporary soil stabilization measures are installed and/or implemented in this area starting on the 7th day from the date the soil disturbance activity ceased.

Comment 88: Will DEC grant a 5 acre disturbance waiver for a project without permit coverage? (40)

Response: Typically, no. The Regional Office staff that makes this determination will make sure that the project has been issued a permit identification number before reviewing the SWPPP.

Comment 89: We feel it should not be the responsibility, at this time, of the regulated MS4's to make authorizations to disturb greater than 5 acres at any one time. DEC should continue to make these determinations. If this requirement goes through, typical conditions for granting such a waiver should be included in MS4 permit and consultation with DEC regional staff before issuance of the authorization should also be a condition of the MS4 permit. (8), (36), (51)

Response: January 8, 2008 marks the time when the regulated, traditional land use controls MS4s will take the lead in the review and acceptance of the SWPPPs. This includes authorizing requests from owners that wish to disturb greater than 5 acres of soil at any one time. The Department will continue to be a resource to the MS4s and their consultants if they encounter questions that need to be addressed in order for them to complete their review.

Comment 90: Part II.C.3 states that the owner may obtain permission to disturb greater than 5 acres at any one time from either the MS4 or DEC. This approval should be a coordinated effort with the DEC and the MS4 both agreeing to authorize large disturbances. (28)

Response: See response to Comment 89.

Comment 91: The requirement for approval of the greater than 5 acres of disturbance at once is acceptable, however there should be two options for an applicant within an MS4. If the applicant knows up front that they will disturb greater than 5 acres at one time, they should be able to get approval during the standard SWPPP approval process at the site plan/subdivision approval level. For those projects that do not know up front, there should be a process whereby after approval and construction has started, a permittee can go back to the MS4. The MS4 should have a maximum of 30 calendar days to consider the request. (29)

Response: The Department does not have the authority to regulate the procedures that a regulated, traditional land use control will use as part of their local review and approval process.

Comment 92: Part II.C.3 discusses the requirements for disturbing more than 5 acres of soil at any one time. Approval must be obtained from the DEC or the MS4 involved. However, only TLUC MS4s are addressed. No specifics are given for TNLUC or NT MS4s. Would the same approval requirements hold. (69)

Response: No, owners of projects located within a TNLUC or NT MS4 shall contact the Department to obtain authorization to disturb greater than 5 acres of soil at any one time.

Comment 93: DEC should consider language which ensures the continued communication between DEC and the MS4s regarding the status of various projects regarding, disturbing greater than 5 acres, winter shutdown, certificate of final stabilization/post-construction controls and Notice of Termination. (19)

Response: Comment noted. The Department will continue to be a resource to the MS4s and their consultants if they encounter questions on the general permit or technical standards.

Comment 94: Undue liability on the compliance inspector is associated with the responsibility of maintaining a key to a locked mailbox, trailer, or vehicle in which a SWPPP and log book may be maintained from multiple construction sites. We request that this section be modified to simply state that if these items are not readily accessible during a site observation that they must be delivered to the stormwater management officer or compliance officer within one business day of a verbal and/or written request. (27)

Response: These documents must be maintained on site so that they are available for review/referral at any time by the contractor responsible for implementation of the SWPPP, the qualified inspector and any compliance inspectors. Therefore, no changes have been made.

Comment 95: Part II.C.2 requires the owner to maintain documents such as the SWPPP and NOI at the construction site until final stabilization has been achieved. Given the nature of many Thruway/Canal Authority projects, this requirement is not always practical. Provisions should be incorporated into the permit allowing non-traditional MS4s to maintain the NOI and SWPPP at a nearby office for those projects that do not have a field trailer or for which storage on site is other wise impractical. Similarly, public display of documents should not be required for non-traditional MS4s. (37), (80)

Response: The Department will address this type of situation on a case by case basis. An owner should contact Regional Office staff prior to commencing construction to determine how this requirement will be addressed.

Comment 96: Does a copy of the permit need to be maintained on-site with the other required documents/forms. Does the NOI need to be posted as required by the current permit? (40)

Response: Yes, a copy of the general permit must be maintained on site. The permit language has been revised to reflect this change. The new general permit does not require the owner to post the Notice of Intent (NOI). Instead, they are required to maintain a copy of the NOI, NOI Acknowledgment Letter, SWPPP, MS4 SWPPP Acceptance form and inspection reports in a secure location, such as a job trailer, on-site construction office, or mailbox with lock.

D. Permit Coverage for Discharges Authorized Under GP-02-01

Comment 97: EPA requires permittees covered under a previous permit to submit a new NOI within 90 days of the effective date of the renewal permit. Please add Federal language. (11)

Response: Pursuant to Part 750-1.21(d)(2), the Department will not require owners that have coverage under GP-02-01 to submit a Notice of Intent (NOI) to transition their coverage over to the new general permit when it is issued. Instead, the Department will send each of the owners with coverage under GP-02-01 a letter informing them that they are now subject to the requirements of the new general permit.

E. Change of Owner or Operator

Comment 98: Please provide guidance on how this process works in subdivisions where there are different owner/operator's (original developer has transferred ownership to a builder, etc.). Original owner is not maintaining erosion and sediment controls or performing inspections.

Response: In subdivisions where the original developer has transferred ownership of some of the building lots to a home builder, the original developer must notify the home builder, in writing, of the requirement to obtain permit coverage by submitting a Notice of Intent (NOI) to the Department. The home builder should specify in the NOI the areas of disturbance that he will be responsible for. If the original developer is, or will be, disturbing soils in the subdivision, they will need to maintain their permit coverage. In addition, if there is a centralized post-construction stormwater management practice, the original owner must maintain permit coverage or another entity must assume responsibility for the operation and maintenance of the post-construction stormwater management practice.

Comment 99: The change of owner/operator process is very cumbersome and time consuming. Notification in writing from the permittee to the new owner/operator is unnecessary. Instead of the current process, maybe each owner should simply sign the SWPPP, identifying the lot number they are responsible for. (29)

Response: Comment noted. However, the Department feels the "Change of Owner or Operator" process is working, therefore, no changes were made.

Comment 100: When developing a subdivision where lots are purchased from the subdivider and developed independently, after the sale of the individual lots, the subdivider no longer has ownership or control over those individual lots, including what construction takes place. Although the subdivider may notify the new owner of their need to obtain permit coverage under GP-0-08-001, there is nothing that binds the new owner to obtain coverage and relieve the subdivider. We would suggest a mechanism be put in place, such as those in Minnesota, which allows a subdivider to terminate the NOI coverage for lots that are sold. Under Minnesota Law, the new owner or operator must submit a Subdivision Registration within seven days. The new owner may use a previously developed Stormwater Pollution Prevention Plan (SWPPP) to limit duplication of work and ensure continuity. Also, they may not make previously implemented BMPs ineffective, further ensuring continuity. (60), (66)

Response: See response to Comment 99. For subdivisions where the original developer has transferred ownership of the undeveloped building lots to either a home builder or individuals, the general permit requires the original developer to notify the home builder or individual lot owners, in writing, of the requirement to obtain permit coverage by submitting a Notice of Intent (NOI) to the Department. If the home builder or individual lot owners does not submit an NOI to obtain permit coverage and they commence construction, they will be in violation of the general permit. Therefore, the original developer must make sure they notify all new lot owners in writing and then maintain copies of this correspondence.

Part III. STORMWATER POLLUTION PREVENTION PLAN (SWPPP)

A. General SWPPP Requirements

Comment 101: Part III. A. 1. seems to indicate that all SWPPPs must be submitted to the DEC. However, Part II. B. 2. states that the SWPPP need only be submitted to DEC if the project requires a UPA permit. (62)

Response: See response to comments 73 and 74.

Comment 102: What qualifications are required to prepare a SWPPP that does not include post-construction controls. It is recommended that minimum standards be set for the preparer of these SWPPPs. (7)

Response: Comment noted. However, the Department has decided not to include qualification requirements in the new general permit for individuals preparing a SWPPP that only requires the erosion and sediment control component.

Comment 103: We believe the changes to these permits enhance public protection and are intended to ensure this important work is performed by qualified professionals such as licensed PEs or other qualified professionals. We understand these changes to mean that any service provided through these permits that is solely within the scope of practice of engineers be performed only by or under the direct supervision of a licensed PE. (30)

Response: Comment noted.

Comment 104: To ensure knowledge in the principles and practices of stormwater management and treatment, “qualified professionals” should be required to attend a minimum number of hours in training events similar to that required by “qualified inspector”. (28)

Response: Comment noted. However, the Department has decided not to make this a requirement because of the existing NYS Education Laws that apply to professional engineers and licensed landscape architects.

Comment 105: Can the Department provide a definition or guidance on what is meant by the term “knowledgeable”? For example, not all licensed Professional Engineers may be “knowledgeable” in the principles and practices of stormwater management and therefore might not be considered a “Qualified Professional” as defined in the permit. Does the description of “knowledgeable” under the “Qualified Inspector” definition apply to qualified professionals? (80)

Response: Individuals preparing SWPPPs that require the post-construction stormwater management practice component must have an understanding of the principles of hydrology, water quality management practice design, water quantity control design, and, in many cases, the principles of hydraulics in order to prepare a SWPPP that conforms to the Department’s technical standard. With regards to the second part of this comment, the Department has revised the language in the definition of Qualified Inspector that addresses the qualifications for people working under the supervision of a licensed Professional Engineer or licensed Landscape Architect. The Department intended to say “Training in the principles and practices of erosion and sediment control means that an individual performing a site inspection... in the last three (3)

years.”, not “Knowledgeable in the”. See revised definition.

Comment 106: It is not practical to require all contractors to receive this training by January 8, 2008. Consider providing a grace/transition period. When does the three year period begin? How does one learn what training is endorsed by DEC. (36), (84)

Response: The Department has established a grace period in the general permit. Contractors will have two (2) years from the date the new general permit is issued to get the required training. After receiving the initial training, the trained individual shall receive four (4) hours of training every three (3) years. Contractors can visit the Department’s website to learn about the training that is available.

Comment 107: How is a permittee to demonstrate that a properly trained contractor is on site everyday. (27)

Response: The owner or operator shall have each contractor and subcontractor, identified pursuant to Part III.A.5, sign the contractor certification statement and attach the statement to the SWPPP. By doing so, each of the contractors and subcontractors is agreeing to comply with the terms and conditions of the SWPPP. This includes having at least one individual with the 4 hour training on site on a daily basis when soil disturbance activities are being performed.

Comment 108: How does the DEC intend to implement the training and certification program for contractors. What are the endorsed entities. How do agencies or individuals become authorized by DEC to perform this training? Can qualified professionals in each municipality gain an endorsement from DEC to perform this training? Will there be standardized test given to training participants to ensure the same base level of knowledge throughout the state? Will training sessions which occurred prior to the permit issuance count towards this requirement? How will contractors prove attendance at the training? It would seem that a licensing and/or certificate program would be appropriate to achieve the goals of the contractor training and authorized trainers rather than a signed certification. (8), (27), (38), (51)

Response: The Department is working closely with the State Soil and Water Conservation Districts to develop standardized courses in erosion and sediment control that contractors can attend to comply with this requirement of the general permit. These training courses will be offered across the state by participating Districts. In addition, the Department will continue to work with the State University of New York College of Environmental Science and Forestry (SUNY-ESF) in the development of courses that can be offered to contractors to satisfy this training requirement. Where Districts can not provide such training, the Department will form training partnerships with other entities.

Comment 109: It is unreasonable and inconsistent with other regulatory programs to expect owners/operators to track the training contractors provide for their employees at this level of detail. For example, owners/operators are not responsible for ensuring that contractors have provided safety, asbestos, HazWOpER, or forklift training. The burden for managing these requirements should be between contractors and the state, not the owners/operators of construction activity. (62)

Response: The Department does not expect the owner/operator to track the training contractors have received. The owner/operator just needs to make sure that each contractor and subcontractor,

identified pursuant to Part III.A.5, has signed the contractor certification statement. By signing the statement, each of the contractors and subcontractors is agreeing to comply with the terms and conditions of the SWPPP, including the 4 hour training requirement.

Comment 110: Is the owner/operator required to have one person who is responsible for E&SC on the job site at all times during construction and does that person has to have 4 hours of endorsed training. (47)

Response: Each contractor that has been identified pursuant to Part III.A.5 shall identify at least one individual (trained individual) from their company that will be responsible for the implementation of the SWPPP. That individual must receive four (4) hours of Department endorsed training within two (2) years of the date the new general permit is issued. The owner or operator shall ensure that at least one of the trained individuals is on site on a daily basis when soil disturbance activities are being performed.

Comment 111: Clarification should be provided as to whether CPESC certified individuals will be required to repeat this 8 hour training every 3 years, even if they keep their certification up-to-date. (38)

Response: The Department did not intend for this training requirement to apply to CPESC that have an up to date certification. This requirement has been updated accordingly.

Comment 112: In many cases the contractor that will be responsible for implementing the requirements of the SWPPP isn't known until after the SWPPP is prepared and may change during the course of construction. Also, frequently the same area will be disturbed by multiple contractors. It is not feasible, in practice, to neatly divide up responsibility between contractors. Add language that states that the contractor certification does not have to be included in the initial SWPPP. (13), (29), (84)

Response: The Department understands that the owner may not know which contractor(s) will be responsible for implementation of the SWPPP at the time the SWPPP is developed. For these situations, the owner just needs to make sure that each contractor that will be responsible for implementing the SWPPP provide the certification and other information required by the general permit prior to commencing any construction activity. If new or additional contractors are hired to implement measures identified in the SWPPP after construction has commenced, they must also sign the certification statement and provide the information requested in the general permit (see Part III.A.5.). The owner shall attach the certification statement(s) to the copy of the SWPPP that is maintained at the construction site.

Comment 113: In many instances, the contractor that will disturb soils or have responsibility for installing, constructing, repairing and maintaining E&SCs will not have a daily on site presence, even during the phase of the project in which they are completing their work. This wording needs to be carefully considered. (37)

Response: Pursuant to Part III.A.5, at least one of the responsible individuals (trained individual) from one of the contractor or subcontractor companies identified by this Part shall be on site on a daily basis when soil disturbance activities are being performed. This trained individual must receive four (4) hours of Department endorsed training within two (2) years of the date the new general permit is issued. After receiving the initial training, the trained individual shall receive four (4) hours of training every three (3) years.

Comment 114: The requirement to have at least one on-site person from each contractor to have received training may be cost prohibitive for some contractors. A clause that requires on-site personnel to have received training or to be under the supervision of an individual that has received training may alleviate some of the economic impact to small firms. (37)

Response: See response to Comment 108.

Comment 115: Under what conditions does the requirement, “... [E]ach contractor or subcontractor identified must have at least one employee on site that has received four (4) hours of training...” apply? For example:

Would it apply at all times the project is active regardless of whether any of the described activities are being performed?

Would it apply to an electrical subcontractor that installs underground conduit?

Does the training requirement apply to all activities? For example, would it apply to a contractor delivering stone to be used for a stabilized construction entrance identified in the SWPPP?

Could the General Contractor be responsible for all the subcontractors and be the one responsible for having *at least one employee on site that has received four (4) hours of training...*”? (80)

Response: See responses to Comments 107,108, 110 and 113.

Comment 116: The contractor certification statement should include language attesting to meeting the training requirements. (36)

Response: By signing the contractor certification statement, each of the contractors and subcontractors identified pursuant to Part III.A.5 is agreeing to comply with the terms and conditions of the SWPPP, including the 4 hour training requirement.

Comment 117: It seems the language in Part III.A.5 (“Contractor Certification Statement”) was changed from the version in Permit GP-02-01 to criminalize more strongly deviations from the SWPPP. Why was it thought necessary to do this and how does this improve compliance? Certifying “inaccurate” information is noted as being a permit violation and a crime. Who gets to define “inaccurate”? The language should at least read “...knowingly certifying false, incorrect or inaccurate information...” (69)

Response: The Department has revised the certification language to address this concern.

Comment 118: The draft permit omits the requirement that a copy of the SWPPP be submitted to the local municipality. Receipt of these plans should serve to increase the local awareness of and involvement in E&SC and stormwater management. (20)

Response: The Department does not feel this should be a requirement since most projects are already subject to review and approval by the local authority. In addition, owners of construction activities that are subject to the requirements of a regulated, traditional land use control MS4 will be required to submit their SWPPP to the MS4 for review.

Comment 119: Part III.A.2 states, “ In addition, the SWPPP shall identify potential sources of pollution which may reasonably be expected to affect the quality of stormwater discharges”. What does this mean? (26)

Response: The SWPPP should identify any chemicals or building materials that may be used during construction or stored on site that have the potential to impact water quality if spilled. The SWPPP should also identify any process that may take place as part of the construction activity that has the potential to impact water quality (e.g. pressure washing, concrete truck washout, sand blasting, etc.).

Comment 120: Part III.A.4 should require that any modification to the SWPPP must also be filed with any agency that the initial SWPPP was filed with. (26)

Response: This is addressed in Part III.A.6. In addition, see response to Comment 125.

Comment 121: Part III.A.4 should include a time frame for updating the SWPPP as well as the entity responsible. (28)

Response: This is addressed in Part III.A.6.

Comment 122: Part III.A.7 requires the SWPPP to be submitted in electronic format. Please confirm that PDF format is permissible. Another comment indicates that this requirement is burdensome and cumbersome because the SWPPP includes many file formats (i.e. Word, Excel, ArcGis, AutoCad). What is the purpose of submitting the SWPPP using two different methods. What file format is required? (37), (58)

Response: This Part has been updated to indicate that the SWPPP shall be submitted in PDF format. The Department is requesting an electronic version of the SWPPP because of the limited storage space available to store paper copies.

Comment 123: The requirement to make required changes to the SWPPP and submit written notification to the Department within 14 calendar days may be restrictive under certain circumstances, such as holiday periods. KAPL recommends the wording be revised to 14 business days to be consistent with submittal requirements elsewhere in the permit. (80)

Response: The permit language states “Within fourteen (14) calendar days of such notification, (or as otherwise provided by the Department) the owner or operator shall make the required changes to the SWPPP...”. The language within the parenthesis addresses this concern, therefore, no changes were made.

Comment 124: National Grid assumes the language in Part III.A.4 pertains to maintaining accurate descriptions of E&SC practices in SWPPP documents and not to constantly changing or updating project SWPPP documents to show the specific locations and types of such control practices. If DEC intends that the SWPPP documents be constantly updated to show specific locations, National Grid recommends that they simply mark-up by hand on the master document in the field. (58)

Response: The erosion and sediment control component of the SWPPP is dynamic and must be continuously amended to reflect changes occurring at the construction site. At a minimum, the SWPPP should be amended 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. In addition, the SWPPP should also be amended to address issues or deficiencies identified during an inspection by the qualified inspector, the Department or other regulatory authority. The Department did not include a requirement in the general permit that specifies the

format that should be used to document the SWPPP modifications. However, the owner needs to ensure that whatever format is used, provides for a clear, concise description of the modifications.

Comment 125: Part III.A. should include a discussion regarding what types of SWPPP revisions require a resubmittal of the NOI and/or SWPPP for DEC approval/information. (84)

Response: The erosion and sediment control component of the SWPPP is dynamic and must be continuously amended to reflect changes occurring at the construction site. However, an owner is typically not required to submit a revised SWPPP to the Department as part of this on going erosion and sediment control update process. With regards to the Notice of Intent (NOI), an owner is required to submit an updated NOI to the Department, unless otherwise notified, when the scope of the project changes significantly, the type of post-construction stormwater management practice(s) (SMP) changes, there is a reduction in the sizing of the post-construction SMP, or there is an increase in the disturbance area or impervious area (see updated permit language in Part VII.G.). See response to Comment 124 also.

Comment 126: Post-construction SMP components of SWPPPs are discussed in Part III.A.2. In this component the applicant should be required to discuss and compare pre- and post-development conditions related to stormwater runoff (e.g. changes in impervious surface coverage, runoff coefficients, volumes and flow rates) (85)

Response: This is addressed in Part III.B.2.

Comment 127: Part III.A.3. states that qualified professionals must prepare post-construction SMPs. The City recommends that the stamp or seal of the professional responsible for preparing the plan be required on the SWPPP drawings/reports. (85)

Response: The Department did not feel it was necessary to make this a permit requirement since the NYS Education Department has rules and regulations that apply to Licensed Professional Engineers.

Comment 128: At Part III.A.5., the City suggests that contractor certifications refer to the SWPPP by approval date. (85)

Response: Comment noted. However, the Department has decided not to make this change.

Comment 129: Part III.A.2 - This section should include language discussing projects with both a remediation/demolition component and a new development/redevelopment component. This text should be provided in or just after this paragraph and should be required in affected SWPPPs in the sections represented by III.B1.b and d. (87)

Response: The existing permit requirements apply to both, therefore, no change has been made.

B. Required SWPPP Contents

Comment 130: The DEC should remove the statement that “All SWPPPs prepared pursuant to this general permit shall include erosion and sediment practices designed in conformance with the New York Standards and Specifications...”. This statement conflicts with existing policy of the DEC which allows SWPPPs to be prepared with practices that are

alternative to those found in the DEC’s technical standard provided that they will ensure compliance with water quality standards. (64)

Response: The Department has updated the language in Part III.B.1 to address this comment.

Comment 131: The DEC should remove the statement that “ All construction projects identified in Table 2 of Appendix B as needing post-construction SMPs shall prepare a SWPPP that also includes practices designed in conformance with the New York State Stormwater Management Design Manual...”. This statement conflicts with the existing policy of the DEC which allows SWPPPs to be prepared with practices that are alternative to those found in the Design Manual provided that they will ensure compliance with water quality standards. (64)

Response: The Department has updated the language in Part III.B.2 to address this comment.

Comment 132: Part III.B.1.b requires the inclusion of off-site material, waste, borrow or equipment storage areas. Why is this, if they are not part of the regulated project area. (57)

Response: This requirement has been revised to indicate that only off-site material, waste, borrow or equipment storage areas located on adjacent properties must be shown. The Department considers these disturbances to be part of the overall project if the owner of the project is either the owner of the adjacent property or they have operational control over the construction plans and specifications for the construction activities planned for the adjacent property.

Comment 133: Part III.B.1.b and Part III.B.2.b- Specify a minimum scale, no smaller than 1" == 50'. (87)

Response: The Department has decided not to require a minimum map scale given the variability in the construction projects that are subject to the general permit.

Comment 134: Part III.B.2.g. would require an operation and maintenance plan for post-construction practices. Why require this for non-traditional MS4s since, by default, they are responsible for this activity anyway. (57)

Response: This is required of all owners or operators that obtain coverage under the general permit.

Comment 135: The identification of the location and proscribed sediment protection measures for existing adjacent stormwater infrastructure is not included in the required SWPPP contents. The methods of identification and demarcation of the disturbance limits of the site should also be a requirement of the SWPPP. (8)

Response: The Department feels the requirements in Part III.B.1 already address the first part of this comment. With regards to the second part of this comment, the Department does not feel that these items need to be addressed through a permit requirement.

Comment 136: The proposed regulations are too costly and burdensome to be put in place without a better technical understanding of how well the recommended practices will actually remove phosphorus. The enhanced phosphorus removal techniques recommended for post-construction stormwater management have not been adequately tested and it is questionable whether they can ever achieve the phosphorus removal values outline in the Design Manual. (9), (39)

Response: The performance criteria for enhanced phosphorus removal is based on the National BMP database(2006), a resource widely used for assessing the performance of stormwater practices. The Department is pursuing opportunities to evaluate the performance of stormwater management practices through different mechanisms as they become available. Currently the Department is looking into utilizing retrofit/demonstration in the New York City watershed as a study opportunity. The results of such studies will be used to verify the effectiveness of SMPs and design standards.

Comment 137: Stormwater ponds within the Onondaga Lake watershed must now be designed to treat a much larger volume in order to comply with the Enhanced Phosphorus Removal criteria. This requirement will greatly increase the cost of development within the watershed. We ask that some alternative means of attaining the design criteria be allowed aside from simply treating a larger volume of stormwater. (14)

Response: The Department will consider alternatives as they are proposed. To date, no such alternative has been proposed.

Comment 138: If designers (Onondaga Lake watershed area) are required to use the Enhanced Phosphorus Removal criteria in the final permit, DEC should provide for expeditious discontinuance of the enhanced requirements once water quality objectives are met. Impacted communities should not have to wait until next general permit cycle to stop using criteria. (23)

Response: The cautionary of new development is that it almost always results in increases to pollutant loading. The most reasonably attainable goal of the enhanced phosphorus removal standard is to minimize the increases in pollutant transport associated with new development. If application of the standard were to be discontinued, new development would result in increased pollutant loadings. At which point the water quality objectives that would have been met through significant investments of public dollars, would once again become unmet.

Comment 139: The DEC should require permittees to identify all operators for the project site and the areas of the site over which each operator has control. Also, DEC should require permittees to report discharges from support activities including discharges from dedicated asphalt plants and concrete plants that are covered by this permit. (11)

Response: Part III.A.5 of the general permit requires the owner to identify the contractor(s) and subcontractor(s) that will be responsible for implementing the erosion and sediment control practices and post-construction stormwater management practices included in the SWPPP. With regards to the second part of this comment, the Department has added this as a requirement in Part III.B.1 of the new general permit.

Comment 140: DEC should include a paragraph that addresses the federal language found in the EPA CGP titles “Documentation of Permit Eligibility Related to Endangered Species”. This requires documentation within the SWPPP that supports a determination of permit eligibility with regard to endangered species. (11)

Response: The Department believes the endangered species act language in the draft permit is adequate. Therefore, no change has been made.

Comment 141: We support the change to require that SWPPPs for construction activities located in the NYC Watershed East of the Hudson include post-construction SMPs. DEC should expand this requirement to include the remainder of Westchester County that is outside watershed. (18)

Response: Comment noted. However, the Department feels the requirement in the draft general permit will protect the New York City water supply. The MS4 can always choose to regulate projects outside the watershed boundary using their local ordinances.

Comment 142: This section requires design in conformance with the “Enhanced Phosphorus Removal Design Criteria”. However, it appears on the DEC website that this document is still in draft format with a comment period that runs until February 21, 2007. Please ensure that the references are accurate and that the correct document is accessible. (29)

Response: The second draft of the Enhanced Phosphorus Removal standards was published for public comments in the Environmental News Bulletin on December 12, 2007, with comments being due on January 11, 2008. The Enhanced Phosphorus Removal standards has been finalized. The Department intends to include a grace period in the general permit for owners having to meet this design criteria.

Comment 143: We object to the timing of the issuance of the GP relative to the finalization of the “Enhanced Phosphorus Removal Design Criteria”. The Design Criteria should have been issued as a final document prior to opening the public comment period for GP-0-08-001. We request that the comment period for the new construction permit be extended so that time can be provided to examine the permit requirements in light of the Design Criteria. DEC should evaluate alternative options in lieu of providing this treatment volume (i.e. redundant treatment practices or treatment trains that can demonstrate higher rate of phosphorus removal than standard practices in the Design Manual). (38)

Response: See response to Comment 142.

Comment 144: It is suggested that this section be revised to include a time period after the issuance of the permit when the design criteria in the Phosphorus Removal Supplement shall be applied to projects. In light of the fact this document has not been finalized, and may not be issued prior to the issuance of the permit, it seems prudent to include wording in the permit as to when projects subject to coverage under the permit should include this criteria. Because the design process for NYSDOT projects can be extend over a period of years, this should be included as an issue to be addressed in a MOU between NYSDOT & DEC. (84)

Response: See response to Comment 142.

Comment 145: Will DEC be issuing a final version of the “Enhanced Phosphorus Removal Design Criteria” and offering training on its use concurrent with the new permit? (43)

Response: See response to Comment 142. With regards to the training, the Department expects that training will be available on the Enhanced Phosphorus Removal standard. In addition, the Department will continue to be a resource to consultants that encounter questions on the Design Criteria.

Comment 146: Will DEC be providing guidance as to how to apply the P removal criteria to watersheds that determine they are in need of such protection even though DEC hasn't fully addressed the non-degradation issues throughout the state to the satisfaction of many watershed stakeholders. (43)

Response: The Department expects application of the Enhanced Phosphorus Removal standards to be similar, irrespective of where it is applied.

Comment 147: Will DEC define what specific enhancements it expects when a construction activity with coverage under GP-02-01 is permitted to discharge in accordance with GP-0-08-001. For example, what happens when such an activity is in a P sensitive watershed. Do the P removal criteria now apply? (43)

Response: Pursuant to 6 NYCRR Part 750-1.21(d)(2), an owner or operator of a construction activity with coverage under the existing SPDES General Permit for Stormwater Discharges from Construction Activity (GP-02-01) as of the effective date of GP-0-08-001 shall be automatically permitted to discharge in accordance with GP-0-08-001 unless otherwise notified by the Department. These owners or operators may continue to implement the technical/design components of the SWPPP that was developed in accordance with the requirements of GP-02-01. However, they will be subject to the provisions of the new general permit, GP-0-08-001.

Comment 148: Will DEC define how agricultural construction activities in P sensitive watersheds adopt P removal criteria while they are applying P to their soils and/or accumulating P in seasonal manure storages? Will agricultural construction operations adjacent to AA waters be required to adopt more stringent practices? Will agricultural construction activities in either situation be required to obtain an individual SPDES permit? (43)

Response: Part III.C. and Appendix B include requirements to address the first issue raised by this comment. With regards to the second question, the owner of any construction activity that meets the requirements of Part I.D.7 or 8, will be ineligible for coverage under the general permit, this includes owners of agricultural construction activities. Part VII.K provides the Department with the authority to require an owner authorized by the general permit to apply for an individual SPDES permit.

Comment 149: Will silvicultural practices in P sensitive watersheds, or in watersheds tributary to AA waters, or occur on soil slope phases E or F be required to adopt particular BMPs and/or obtain individual SPDES permits if the construction of haul roads and landings disturbs more than 1 acre? (43)

Response: Owners of construction activities that can be classified as silvicultural activity, as defined in 40 CFR Part 122, are not required to obtain coverage under the general permit.

Comment 150: We continue to take issue with DEC's reliance upon guidance documents, which may or may not be final and which may or may not exist as the effective date of the permit, as a condition of permit compliance. The procedures for developing and issuing guidance documents are substantially different from those used to develop and promulgate new regulations. It would appear that DEC is circumventing its own regulatory procedures. (37)

Response: All supporting documentation has been finalized.

Comment 151: There is no mention of dust control in the Required SWPPP Contents section. The method of dust control would be beneficial to know since using a salt product may become detrimental to the water quality in a sensitive watershed. (45)

Response: Part III.B.1 requires all SWPPPs prepared pursuant to the general permit to include erosion and sediment control practices designed in conformance with the New York Standards and Specifications for Erosion and Sediment Control. This technical standard includes requirements that address dust control (see page 5A.87).

Comment 152: Part III.B.2 is requiring the SWPPP to be in conformance with the Design Manual, and Parts II.B.1.b and III.B.2.d are allowing the designer to deviate from the standards. This is confusing. The requirement for the SWPPP to be designed in conformance with the Design Manual should be changed to read “in general conformance with the Design Manual”. (46)

Response: See responses to Comments 130 and 131.

Comment 153: Many of the particulars of the Design Manual do not work in a practical sense. Many, if not most sites cannot meet every required item listed in the Design Manual. If the intent of the general permit is to meet the Design Manual standards, then the Design Manual should be promulgated. (46)

Response: Part III.B.2.d provides an owner with the process for handling designs that do not conform to the Design Manual in full.

Comment 154: Part III.b.2.d requires the SWPPP preparer to give reasons for deviations and demonstrate that alternative designs are equivalent to the technical standards. The Design Manual gives no empirical data on the stormwater quality controls so demonstrating an alternative design is equivalent is unrealistic. The technical standards should only be referenced in the Permit as a suggested guideline. (46)

Response: The effectiveness of standard practices in the New York State Stormwater Management Design Manual are derived from the empirical data that appear in the National Pollutant Removal Performance Database (June 2000). To deviate from design specifications of these practices, engineers need to provide alternatives that result in the same functionality and performance. A number of design elements for all practices are defined as guidance that provide opportunity for modification to a reasonable extent without neglecting the performance of the system. To deviate from standard practices by proposing new technologies, one needs to follow the procedure defined in chapter 5 of the Design Manual.

Comment 155: Part III.b.2.f requires the SWPPP preparer to justify any deviations from the Design Manual as far as sizing criteria. Water quantity controls are not part of the ECL nor are part of the GP Coverage and Limitations and therefore reference to water quantity controls should be taken out of the GP. (46)

Response: The Department feels that all of the sizing criteria included in Chapter 4 of the NYS Stormwater Management Design Manual help to protect water quality. Therefore, no change has been made.

Comment 156: Part III.B.1.d. & e - Elements of the SWPPP that deal with construction scheduling and sequencing must be accepted and understood as being a guide, not a rigid

directive. Once construction is underway sequencing and scheduling can be affected by any number of things including weather, supply of needed materials, scheduling of subs and/or utility work, unanticipated field conditions, etc. Certification of Compliance with the SWPPP should not criminalize or prevent normal conduct of construction operations. (69)

Response: See responses to Comments 124 and 125.

Comment 157: As described in Part III.B.1.f, the requirement for stabilization where soil disturbance activity has temporarily or permanently ceased must be in accordance with the requirements in Section 2 of the Blue Book. The requirement in Section 2 is to provide temporary vegetative stabilization for areas that will be exposed for longer than 14 days. Is this consistent with the Department’s intent? How does this apply when frozen ground or snow cover precludes this? What if soil disturbing activities will be resumed within 21 days? (80)

Response: Yes, this is the Department’s intent. Please be advised that the requirement for stabilization in Section 2 of the Standards and Specifications for Erosion and Sediment Control is different from the current requirement in GP-02-01. Requiring an owner to stabilize an area as soon as practicable if the initiation of stabilization measures was precluded by snow cover or frozen ground conditions no longer applies. In addition, the provision that allowed an owner not to initiate stabilization measures on an area if soil disturbance activities would be resumed on that area within 21 days no longer applies.

Comment 158: Part III.B.2 requires planning (in SWPPP) and implementation of post-construction SMPs for certain construction projects specified in Table 2 of Appendix B - this is a new requirement. It is not clear from reviewing the table whether Army construction will require post-construction management. (81)

Response: If the type of construction project that the Army is planning is identified in Table 2 of Appendix B, the SWPPP will typically need to include post-construction stormwater management practices.

Comment 159: At Part III.B.1.a.-b., the permittee should be required to identify the receiving water body as part of the SWPPP. (85)

Response: This is addressed in Part III.B.1.b.

Comment 160: At Part III.B.1.e, the permit should cite appropriate guidance documents, if any, for selecting E&SC practices. (85)

Response: Part B.1 requires erosion and sediment control practices to be designed in conformance with the technical standard, New York Standards and Specifications for Erosion and Sediment Control.

Comment 161: All “structural components” of a stormwater management control system are required to undergo hydrologic and hydraulic analysis under Part III.B.2.e. A definition of the term “structural components” would be helpful, as the analysis might or might not be required for vegetative practices, such as grassed swales and grass buffer strips. The City recommends use of the Design Manual’s “structural components” definition, which does include vegetative practices. (85)

Response: All SWPPPs with a post construction component require hydrologic analysis for

calculation of water quality or channel protection volume regardless of type of treatment practice. Any SMP designed with capacity to control, contain, and release the runoff from an outlet structure normally follow hydraulic and hydrostatic design procedures. Such analysis needs to be satisfied and documented. A structural SMP is a physical device or engineered system designed to capture, treat, and release stormwater runoff to meet a certain level of treatment, detention and release rate defined by accepted performance standards. Although many non-structural practices may have a simple design for sizing and construction, some may also perform as a component of a conveyance system which may require hydraulic analysis.

C. Required SWPPP Components by Project Type

Comment 162: EPA believes that the DEC's permit is less stringent where in the second section of Table 1 (Appendix B) allows for a SWPPP that includes just E&SCs. This list includes projects that disturb greater than 5 acres (Phase I projects). Please include all the items in the second section of Table 1 to the section of the table which has the 1 or more acres of land, but less than 5 acre requirements. (11)

Response: For each of the projects listed in the second section of Table 1, the Department considers final stabilization in accordance with the general permit as a post construction control measure that is as stringent as EPA's requirements.

Comment 163: Requiring stormwater treatment ponds or other post-construction stormwater management practices for residential projects between 1 to 5 acres in the listed watersheds will greatly increase the cost of small-scale development. It will also result in more inspection and maintenance responsibilities for municipalities. (14), (38)

Response: See response to Comments 136, 137 and 138.

Comment 164: The requirement for post-construction SMPs for single family residential projects of 1 to 5 acre disturbance in watersheds that are on the 303(d) list for silt/sediment seems excessive. It is likely that in many cases, small lot sizes will make construction of such practices physically impossible. We recommend that the threshold for this requirement be increased to 3 acres. (38)

Response: Comment noted. However, the Department has decided not to make this change.

Comment 165: The requirement for post-construction SMPs raises the concern for existing lake communities with on-site well and septic systems, where property owners want to add to their home and may be unduly restricted from doing so by the water quality feature's setback requirements from the on-site utilities. This restriction in the long range will have a tendency to become a blight on the community and negatively affect land values. (75)

Response: The Department disagrees. If done properly, stormwater management practices can protect the economic value of a developed parcel of land, rather than diminish the land value.

Comment 166: Does the requirement to provide post-construction stormwater management practices for activities listed on Table 2 in Appendix B include consideration for projects that are designed in conformance with the Departments technical standards, such as Chapter 9 in the Design Manual, and related conditions, such as discharging directly to a 4th order or greater stream, and results in not having to provide post-construction stormwater

management practices? For example, under the Design Manual Chapter 9 – Redevelopment, a construction project designed to reduce the impervious cover by at least 25% would meet the water quality treatment objective. Further, if the project also meets the requirements under Section 9.3.2.A.I. and II, water quantity controls are not necessary. (80)

Response: The requirement to provide post-construction stormwater management controls for the construction activities identified in Table 2 of Appendix B applies to both new construction and redevelopment of the projects listed. With regards to the second question, if the design reduces the impervious cover by at least 25%, the water quality treatment objective would be met, provided the project did not involve an overall expansion in impervious area. In response to the third question, water quantity controls would not be necessary if the criteria in Sections 9.3.2.A.I and II are met.

Part IV. INSPECTION AND MAINTENANCE REQUIREMENTS

A. Construction Activities That Require Site Inspections

Comment 167: We believe that the self-inspection requirement should not be waived for single family, single family residential subdivisions with 25% or less impervious cover at total build-out and less than 5 acres of disturbance, and construction on agricultural property with less than 5 acres disturbance. Recommend an inspection frequency of 1 every 14 days or within 24 hours of 0.5 rain event for these projects listed above. Recommends 7 day inspection frequency for all other projects. Also recommends requiring a preconstruction inspection to make sure initial E&SCs are installed properly. (8)

Response: Comment noted. However, the Department has decided not to make this change. Owner's of these construction activities are reminded that the New York Standards and Specifications for Erosion and Sediment Control calls for a number of the practices included in this standard to be inspected after every rain event. These inspections are typically performed by the contractor or subcontractor that will be responsible for installing, constructing, repairing and maintaining the erosion and sediment control practices included in the SWPPP.

Comment 168: EPA does not exempt from inspection the construction activities listed in this section. EPA believes that the DEC's permit is "less stringent" than the federal regulation and the language should be removed. (11)

Response: This section of the permit has been updated to remind an owner or operator that the New York Standards and Specifications for Erosion and Sediment Control calls for a number of the practices included in this standard to be inspected after every rain event. These inspections are typically performed by the contractor or subcontractor that will be responsible for installing, constructing, repairing and maintaining the erosion and sediment control practices included in the SWPPP.

Comment 169: This section should be rewritten to make it easier to read. Bulleted text could be used to make things clearer. (51)

Response: The Department has updated this section of the permit as requested.

B. Construction Site Inspection and Maintenance Requirements

Comment 170: Numerous people recommended a 7 day inspection schedule with no rain event inspection. The requirement to perform an inspection following a 0.5 inch rainfall is excessive and is generally viewed by the public as a requirement to make work for professionals, they are often redundant and can be a financial burden. (32), (34), (35), (55), (56)

Response: Part IV.B.1.a. has been revised to indicate that an owner or operator shall have a qualified inspector conduct a site inspection at least once every seven (7) calendar days. The Department feels that this inspection frequency will provide for better site management since the owner, the responsible contractor(s)/subcontractor(s) and qualified inspector will all know when the inspection will be performed and can meet to discuss any deficiencies with the implementation of the SWPPP. In addition, by maintaining the requirement to perform one inspection every seven (7) days, the qualified inspector can monitor the site more frequently and proactively address any deficiencies with the implementation of the SWPPP. The Department did not feel that it was necessary to maintain the requirement for the qualified inspector to perform an inspection after a rain event of 0.5 inches since the New York Standards and Specifications for Erosion and Sediment Control requires the owner to inspect and maintain many of the practices after every rain event. An owner will typically have one of the contractor(s) or subcontractor(s) that has been identified pursuant to Part III.A.5. perform these rain event inspections.

Comment 171: If rain event occurs on weekend inspection can be performed on next business day. What about holidays? Comment recommends two business days.

Response: The requirement for the qualified inspector to perform an inspection`within 24 hours of the end of a rain event of 0.5 inches or greater has been removed. Therefore, this comment is no longer applicable. However, owner's are reminded that either they or their contractor(s) or subcontractor(s) that have been identified as being responsible for the implementation of the SWPPP (see Part III.A.5.) must inspect and maintain many of the practices included in the Standards and Specifications for Erosion and Sediment Control after every rain event.

Comment 172: What is the dry period that must occur between successive distinguishable rain events for purposes of inspections. (87)

Response: See response to Comment 171.

Comment 173: Part IV.B.1.c - Does an NOI need to be filed to restart construction. Should this language be revised to include “ or sites where construction activities will cease for at least 90 calendar days.”(87)

Response: If the owner has maintained their permit coverage, the answer is no, they do not need to resubmit an NOI. With regards to the second question in this comment, the answer is no.

Comment 174: Part IV.B.1.d. - Should this language be revised to include “ all erosion and sediment controls have been removed from the site”. Comment also recommends changing time period from 2years to 1 year (“If soil disturbance activities are not resumed within 2 years...”). (87)

Response: This language has been added to Part IV.B.1.d. With regards to the second comment, the Department has decided not to make this change.

Comment 175: The draft permit requires site inspections every 14 calendar days. While the City understands the balancing of interests that went into this change, the City notes that the previous requirement of a site inspection every 7 days afforded greater opportunities for detecting problems promptly and preventing pollutant discharges. (85)

Response: See responses to Comments 170 and 171.

Comment 176: The City recommends requiring an inspection within 24 hours after a major (1 year, 24 hour) rain event, rather than allowing inspection to wait until the next business day. Rainfall-induced erosion and sedimentation associated with major storms require immediate attention, even when they occur in a Friday, Saturday or holiday. The City recommends also requiring inspection prior to forecasted major rain events. (85)

Response: See responses to Comments 170 and 171.

Comment 177: If the inspection schedule goes through as currently proposed in the draft permit, the required inspection after the rain event should be completed within 2 business days of the end of the event rather than 24 hours. (34) , (35), (56)

Response: See responses to Comments 170 and 171.

Comment 178: Inspection frequency for sites that have received authorization to disturb greater than 5 acres at any one time should be 1 every 7 days and after 0.5 inch rain event. Two inspections per week will become a financial burden. Schedule above (1 every 7 days and after 0.5 inch rain event) will accomplish same thing. Another comment indicates that requiring two inspections per week is unlikely to produce better results. The permit should specify a minimum time frame between the inspections. Another option would be to require daily reports from the contractor and weekly inspections by a qualified inspector. Another comment recommends one inspection every 7 days for sites with HSG Cor D (erodible soils), and/or slopes of at least 25%, and at least 100 feet in length. (13), (29), (40), (74), (87)

Response: The Department feels that construction sites that have received authorization to disturb greater than 5 acres at any one time require increased monitoring and oversight of the erosion and sediment controls in order to prevent erosion problems. Therefore, the required inspection frequency of two (2) site inspections every seven (7) calendar days has not been changed. The language in this section has been revised to specify a minimum time frame between the inspections (see Part IV.B.1.b.).

Comment 179: Part IV.B.1.d. offers more specific guidance for sites that effectively shut down before housing lots are developed. However, it does not quite address the common occurrence where a developer sells off individual lots which are then developed over a period of several years. One option may be to require each of these individual lots to file an NOI regardless of the amount of disturbance on that lot, rather than requiring one individual to hold the permit for the entire site. (74)

Response: Part II.E. "Change of Owner or Operator" requires the developer to transfer permit coverage to the individual lot owners prior to that lot owner commencing construction. To do this, the individual lot owner must file an NOI with the Department to obtain coverage under the general permit.

Comment 180: The inspection requirements during construction have been made more reasonable, and more in line with typical needs of smaller projects. Larger projects may still require more frequent inspections, and that can be left up to the engineer to “suggest” to the owner, however, DEC may want consider a threshold at which more frequent inspections would be a regulatory requirement. (31)

Response: See responses to Comments 170 and 171.

Comment 181: Allow for choice in inspection frequency - 1 every 7 days, or 1 every 14 days and after significant rain events.

Response: See responses to Comments 170 and 171.

Comment 182: Allow for choice in inspection frequency similar to EPA’s permit - 1 every 7 days, or 1 every 14 days and after 0.5 inch or greater rain event. (28)

Response: See responses to Comments 170 and 171.

Comment 183: We suggest that the 7 day inspection schedule be kept and require site inspections only after the 90% storm (0.8" to 1.3") instead of the 0.5" rain event. (19) (33)

Response: See responses to Comments 170 and 171.

Comment 184: We suggest that inspections be performed at least once every seven days and within 24 hours of the end of a rain events in excess 1 inch between the months of May and August or 2 inches during the rest of the year. (27)

Response: See responses to Comments 170 and 171.

Comment 185: Inspections should be performed at regular intervals, +/- 10 days, along with storm preparedness inspections. (54)

Response: See responses to Comments 170 and 171.

Comment 186: The current guidance from the Department, included in FAQs (Question 24, version 1.0, dated 6/20/03), is that a rain event of 0.5 inches or greater occurs within a 24-hour period. The guidance provided in the FAQs is not included in the draft permit. Is the omission intentional? (80)

Response: See responses to Comments 170 and 171.

Comment 187: The requirement to perform an initial site inspection has been removed. This requirement or a mandatory pre-construction meeting with the MS4, site contractor(s), permittee, qualified professional, and qualified inspector should be added to the draft. (28), (53), (85)

Response: The Department agrees that a pre-construction meeting can be beneficial, however, we do not feel that this should be a permit requirement for all construction activities. In addition, the owner is required to have the qualified inspector start performing site inspections within seven (7) calendar days of the commencement of construction.

Comment 188: The inspector should provide the inspection report to the responsible contractor and owner within one business day of the inspection, not 24 hours. The 24 hour requirement does not take into account weekends and holidays. The DEC should allow some

flexibility with the time frame for the contractor to begin implementing corrective actions (permit requires contractor to start within 24 hours of notification). Some sites may be shutdown for a couple of days because of weather conditions. Contractor may not be onsite. Does the qualified inspector need to notify the contractor in writing of deficiencies. If not, this gives the owner and/or contractor and out. They could say they need received a telephone message. Provide clarification of the term “reasonable time frame”. (28), (34), (35), (72), (80)

Response: The language in this section has been revised to indicate that the qualified inspector shall notify the owner or operator and appropriate contractor within one business day of the completion of the inspection. The time frame for the contractor to begin implementing the corrective actions has been changed to one business day. The qualified inspector is not required to notify, in writing, the owner or operator and appropriate contractor of any corrective actions that need to be taken. However, the qualified inspector is required to document the corrective actions in the inspection report which is available to both parties. The Department has not provided a definition for “reasonable time frame” given the variability in the deficiencies that may need to be addressed.

Comment 189: Directives for the correction of deficiencies identified with construction of post-construction controls should only be allowed to be given by a qualified professional, not a qualified inspector. (7)

Response: The owner of a construction activity needs to ensure that the appropriate “Qualified Inspector” has been hired to inspect the different components of the SWPPP. Some of the individuals included in the definition of “Qualified Inspector” may not have the necessary qualifications, certification(s) or license(s) to inspect a post-construction stormwater management practice and then certify that it has been constructed in conformance with the SWPPP. (Refer to the NYS Education Department rules and regulations that apply to licensed professional engineers) For these inspections, the owner may have to hire the design engineer (or other professional engineer) to act as the “Qualified Inspector” in order to meet any NYS Education Department rules and regulations that apply to licensed professionals.

Comment 190: Inspection reports should also be signed by owner/operator. The signature of the inspector is meaningless as he or she is the person that prepared the report. Having the owner sign the inspection report establishes in the documentation that the responsible party is aware of sites activities and is properly overseeing the work. In addition, we feel that a time frame for posting signed inspection reports on the site should be given. (19), (28), (34), (35), (56)

Response: Comment noted. However, the Department does not feel that the owner needs to sign the inspection reports since the qualified inspector is hired by and reports to the owner.

Comment 191: If the qualified inspector is performing inspections under the supervision of a qualified professional, what are the signature requirements for the inspection form? If the inspection is performed by a contractor, is the owner/operator required to sign the form in addition to the inspector? (80)

Response: The general permit requires the qualified inspector to sign the inspection reports. Unless the contractor can meet the qualifications of the “qualified inspector”, as defined in the

permit, he can not perform the inspections. If the contractor can meet the qualifications, he can sign the inspection reports.

Comment 192: For subdivisions only, require self-inspections be performed in accordance with draft permit requirements (14 day and after 0.5 inch rain event) during clearing, grading, utility and road construction. Require site to be stabilized and certified by qualified inspector before any building permits are issued. After home construction begins, have local CEO due compliance inspections biweekly. If requested by CEO, and at least quarterly, require an inspection by a qualified inspector with report sent to both municipality and DEC. (13)

Response: See responses to Comments 170 and 171.

Comment 193: When a project’s soil disturbance activities are not resumed within 2 years from the date of shutdown, as described in Part IV.B.1.d, please state whether a permit can be reopened or a new project permit must be obtained. (29)

Response: If the owner has submitted a Notice of Termination (NOT) they will have to submit a new Notice of Intent prior to commencing construction.

Comment 194: Clarify “rain event”. What proximity so project site. (40)

Response: Rain event means the total amount of rain that falls within a twenty four (24) hour period. The 24 hour period begins at the start of the rain event.

Comment 195: Remove the Regional notification requirement in Part IV.B.d. . This is cumbersome practice and serves no useful benefit. (50)

Response: The Department feels that this notification will be beneficial and therefore, has decided not to change this requirement.

Comment 196: At Part IV.B.1.d, the required procedures for shut down at a partially completed construction site should include evaluation of hydrology and outlet hydraulics for both the interim and final conditions, given that final build-out may entail hydraulics and hydrology different from that associated with the interim condition. (85)

Response: The Department considers this to already be a requirement of the general permit. See Part III.A.4.

Comment 197: Why is the Department requiring a written notification to the Regional Office prior to implementing the “winter inspection plan”? Does the winter site stabilization guidance go away? When do the routine inspections need to be initiated again? What is the impact to a site that is in winter stabilization in accordance with the current Department guidance when the new permit becomes effective? (80)

Response: The written notification will allow the Department to track the construction sites that have reduced the frequency of inspections. The “Winter Site Stabilization/Site Inspection for Construction Sites under SPDES General Permit for Stormwater (GP-02-01) guidance document will not be applicable under the new general permit. The owner will be required to start performing inspections in accordance with the schedules included in Part IV.C.2. a. or b. as soon as soil disturbance activities resume. If all disturbed areas were stabilized (permanent or temporary) in accordance with the requirements in the Standards and Specifications for Erosion

and Sediment Control, there will be no impact to the site.

Comment 198: Inspection frequencies in the Blue Book (Appendix H, Part I.a, 4th paragraph) conflict with those in the draft permit (Part IV.B). (53)

Response: The Department intends to update the Blue Book to address any changes created by the new general permit.

Comment 199: Are inspections within 24 hours of a rain event of 0.5" or greater required for Part's IV.B.1.b. and c. (now Part's IV.C.2.b. and c.)? Have the monthly and quarterly inspection summaries been eliminated. (53)

Response: Inspections within 24 hours of a rain event of 0.5" or greater are not required by Part's IV.C.2.b. and c.. Yes, the monthly and quarterly inspection summaries are no longer required in the new general permit.

Comment 200: Although inspections are only required every 30 days, it is suggested that inspections also occur after rain events of 0.5 inch or more. In the event erosion takes place during this time repairs can be made in a more timely manner. (84)

Response: Comment noted. However, the Department has decided not to make this change. Owner's are reminded that either they or their contractor(s) or subcontractor(s) that have been identified as being responsible for the implementation of the SWPPP (see Part III.A.5.) must inspect and maintain many of the practices included in the Standards and Specifications for Erosion and Sediment Control after every rain event.

Comment 201: Part IV. B. 2. - The final discharge point from the project site or the point at which the discharge enters the MS4 should be the end point of the inspection. It is not always practical to inspect all the way to the receiving water – in some cases this could be miles away. If there is a long distance, it becomes very complicated to discern the impacts of one particular discharge versus all of the discharges combined effects.

Clarify "receiving waters" – does this mean a stream or could it mean the MS4, ditch, ground surface, etc. (62)

Response: The Department agrees with the first part of this comment and has revised the language to address this concern. Receiving waters means a natural surface waterbody, including, but not limited to a stream, lake, pond, wetland or river. It does not include manmade conveyances such as an MS4 or ditch.

Comment 202: The new inspection requirements are not in line with the inspection requirements written into law under the current permit. This will require the newly enacted Local Laws be amended, at additional cost to MS4s. (65)

Response: Although recommended by the Department, a regulated, traditional land use control MS4 that has adopted the Model Law (or equivalent law) is not required to amend their local laws to meet the requirements in the new general permit. The Department decided not to require this amendment since the owner of a construction activity is still required to obtain coverage under the general permit. Therefore, the owner must comply with the more stringent requirements of the general permit and local law, including the requirements for inspections.

Comment 203: Part IV.B.5. states that the owner or operator is to ensure that all erosion and sedimentation control practices identified in the SWPPP are always maintained in effective operating condition. A construction site is under the operational control of the contractor. Other than enforcing the construction contract to the best of its ability a County has no mechanism to physically make this happen. (69)

Response: If the County holds the permit, they are responsible for complying with all provisions of the permit.

Comment 204: Part IV.B.3. - The use of DEC forms should be mandatory for purposes of consistency and maintaining a standard. (87)

Response: The requirements in this part apply to the inspections that the Qualified Inspector is performing. Therefore, use of the Department's inspection form would not be appropriate.

Comment 205: Part IV.B.3.e. - Add “ since the last inspection” to the end of this sentence. (87)

Response: The Department decided not to make this change because some of the repairs or maintenance identified in the previous inspection may not have been addressed.

Comment 206: Part IV.B.3.i - Revise language to read “Current phase of construction or percent complete...”. (87)

Response: Comment noted. However, the Department feels the requirement is sufficient.

Comment 207: Part IV.B.4. - Change “in a reasonable time frame” to “within 14 calendar days”. (87)

Response: The Department has not provided a definition for “reasonable time frame” given the variability in the deficiencies that may need to be addressed from site to site.

Comment 208: Part IV.B.5. - Revise language to read “The owner or operator must ensure that all erosion and sediment control practices identified in the SWPPP are maintained and operating in accordance with the SWPPP. (87)

Response: The Department feels the existing language is more appropriate.

Comment 209: Part IV.B.7. - DEC should note what law applies here, it would present more strength and may cause more compliance. (87)

Response: This provision is intended to reserve the Department's right to apply all applicable laws.

Part V. TERMINATION OR TRANSFER OF PERMIT COVERAGE

A. Termination of Permit Coverage

Comment 210: Engineers will not be able to certify that post-construction controls were built in accordance with SWPPP without additional detailed measurements. Need as-built survey stamped by licensed land surveyor.

Response: NYS Education law addresses the necessary requirements for professional engineers to certify plans. See response to Comment 189.

Comment 211: Many times person certifying final stabilization, removal of E&SC practices and post-construction SMPs is not the designer and may be certifying elements revised in the field and not agreed upon by the designer and/or approved by the MS4. It is essential to include the design engineer and MS4 in the certification process. It is imperative that MS4s be involved on the NOT acceptance. (19), (33)

Response: The owner of a construction activity needs to ensure that the appropriate “Qualified Inspector” has been hired to inspect the different components of a SWPPP. Some of the individuals included in the definition of “Qualified Inspector” may not have the necessary qualifications, certification(s) or license(s) to inspect a post-construction stormwater management practice and then certify that it has been constructed in conformance with the SWPPP (Refer to the NYS Education Department rules and regulations that apply to licensed professional engineers and landscape architects). For these inspections, the owner may have to hire the qualified professional that prepared the SWPPP (or other qualified professional) to act as the “Qualified Inspector”. With regards to the second part of this comment on getting the MS4’s involved in the certification process, the Department considers this a significant change that can not be made at this time.

Comment 212: Part V.A.4 should be revised to clarify that this requirement does not apply to projects completed within existing rights of way or on other public properties by a public entity as these entities, by their very nature, have the authority and responsibility to operate and maintain facilities under their control. (37)

Response: The language in this part of the permit has been revised to address this concern. See Part V.A.4.c and d..

Comment 213: We would like to suggest a specific length of time for which soil disturbance activities must be dormant be stated in Part V.A.2.b of the permit, or ensure that there is Regional consensus regarding the length of time construction be dormant before a NOT can be filed. (60)

Response: Comment noted. However, the Department has decided not to make this change.

Comment 214: Part V. A. 4. c. - Deed restrictions seem an impractical, arduous, and extreme measure of ensuring stormwater management in perpetuity. Particularly in an institutional setting, where the campus is undergoing constant change and expansion, this creates an extremely inflexible and artificial restriction on growth and the ability to modify physical operations to support the mission of the institution. In addition, the traditional metes and bounds methods used for easements and deed restrictions are impractical to apply given the hydrologic footprint of many structures. The local municipalities are dealing with long-term operation and maintenance of permanent stormwater controls in their local laws. The MS4’s have the ability to evaluate individual situations and apply a mechanism to achieve the goal of long-term stormwater management in a more practical and manageable manner. This permit needs to allow for this flexibility. One way to achieve this is to allow construction activities that are subject to the requirements of a regulated, traditional, land use control MS4 to comply with the requirements of that MS4 instead. (62)

Response: See response to Comment 212 and updated language in Part V.A.4..

Comment 215: Some permittees, including NYSDOT , have mechanisms to accomplish the requirement in Part V.A.4.c (deed restriction in place that requires operation and maintenance of practices...) without requiring a deed restriction. It is suggested that this section be expanded to allow for alternative mechanisms. (84)

Response: See response to Comment 212 and updated language in Part V.A.4..

Comment 216: How would a non-traditional MS4, such as a federal facility, comply with the requirements in Part V.A.4 subpart, including deeding right-of-ways to municipalities, executing a maintenance agreement with a municipality, and having a deed restriction in place. (80)

Response: See response to Comment 212 and updated language in Part V.A.4..

Comment 217: Part V.A.3 should be clarified as to whether subpart IV.A.2 or IV (V?).A.4 are referenced, as both have subdivision a. and b.. This comment also applies to the first sentence in subpart IV.A.4. (84)

Response: The general permit has been updated to address this comment.

Comment 218: At part V.A.4, when discussing post-construction maintenance of stormwater practices, the permit should clarify the role of homeowners' associations and other non-municipal maintenance parties. (85)

Response: The Department does not feel that it is appropriate to provide this level of detail in the general permit. If the owner of the construction activity identifies a homeowners' association or other non-municipal entity as the responsible party for the operation and maintenance of the post-construction stormwater management practices, pursuant to Part III.B.2.g., they will be responsible for the long term operation and maintenance of each of the practices.

Comment 219: Part V.A.1. - The language reads "An owner or operator may terminate....". Should may be revised to must? If there is no reason the DEC would want a completed site to file an NOT, use "must" and specify a maximum period between final stabilization and NOT submittal. (87)

Response: This section is intended to inform an owner of the conditions that must be met in order for them to terminate their permit coverage. Although recommended by the Department, an owner does not have to terminate their permit coverage.

Part VI. REPORTING AND RETENTION OF RECORDS

Comment 220: Part VI.B requires certain forms to be submitted to appropriate DEC regional office. We are concerned that regional submissions may result in inconsistent permit interpretations. For statewide entities, like TA/CC, it may be more appropriate for all submittals to go to Central Office. (37)

Response: Comment noted. However, the Department has decided not to make this change.

Comment 221: The record retention period for completed projects should be reduced from 5 years to 2 years. (64)

Response: The record retention period of 5 years is consistent with the requirements in 6 NYCRR Part 750, State Pollutant Discharge Elimination System (SPDES) Permits. Therefore, no change

has been made to this requirement.

Part VII. STANDARD PERMIT CONDITIONS

A. Duty to Comply

Comment 222: Should all the “shall”s be “will” in the last sentence. (87)

Response: The Department feels that the term “shall” is appropriate, therefore, no change has been made.

B. Continuation of the Expired General Permit

No comments were received on this section.

C. Enforcement

Comment 223: On the surface the penalties seem excessive; but without specific information on the probable “sliding scale” to reference violation types and related penalties we trust that there exists a means for relative correlation of the violation to the penalty. (10)

Response: The penalties are set by the Environmental Conservation Law (ECL). Article 71 of the ECL, at 71-1929, provides for civil penalties of up to \$37,500 per day for violations of Article 17 of the ECL.

Comment 224: This section requires strict adherence to the permit requirements. Any failure to do so constitutes a permit violation subject to criminal, civil and administrative penalties. As implied above in other comments “strict adherence” needs to be interpreted realistically as a practical matter so as not to unnecessarily impede operations. (69)

Response: Comment noted.

Comment 225: 6 NYCRR 750-2.4 is more stringent than this paragraph. I thought that the state regulations governed this permit. I could not find the origin of this amount. What is it’s source. (87)

Response: Article 71 of the Environmental Conservation Law (ECL), at 71-1929, provides for civil penalties of up to \$37,500 per day for violations of Article 17 of the ECL.

D. Need to Halt or Reduce Activity Not a Defense

No comments were received on this section.

E. Duty to Mitigate

Comment 226: TOGS standards should be developed for runoff from former contamination sites. (87)

Response: This is beyond the scope of the general permit. In addition, there are other programs in place to address stormwater runoff from contaminated sites.

F. Duty to Provide Information

Comment 227: The 25 business day requirement for a permittee to provide information seems excessive. All information that the DEC request should be provided within 5 business days. Another comment recommends that the information be submitted within 72 hours of a request. (28), (85)

Response: The Department has changed the requirement to 5 business as recommended.

Comment 228: This paragraph should be revised to include “ an executed maintenance agreement, a deed restriction that requires operation and maintenance of the practice(s) in accordance with the operations and maintenance plan.

Response: The Department has made this change.

G. Other Information

Comment 229: Only significant changes should be reported. (62)

Response: The Department has updated this language to better define the changes that should be reported.

Comment 230: The requirements of this paragraph may not be practical or possible as often SWPPP changes are required due to an unforeseen change in site operations. In addition, this statement contradicts Part III.B.2 and C. These paragraphs would indicate that the SWPPP is a dynamic document and that changes may and probably will be required to achieve/maintain its effectiveness. It is not possible to foresee and describe every change anticipated to the SWPPP during construction and thereafter. (87)

Response: See response to Comments 124 and 125.

H. Signatory Requirements

Comment 231: Is the owner/operator certification statement still required. I did not see this requirement in the draft permit. Previously, the owner signed the certification statement on the NOI, will they be required to still do so along with the SWPPP preparer. (44)

Response: The owner or operator and SWPPP Preparer certification statements are located on the updated Notice of Intent.

Comment 232: Part VII.H.1.c. - As a public entity, a County is required to have the NOI and NOT signed by a principal executive officer or a ranking elected official. For a County, these signatures should be provided by an officially designated representative of the County Executive, which should be the Commissioner of Public Works. Requiring signatures to be obtained from above this level accomplishes nothing and will impede project progress. (69)

Response: The Department considers the Commissioner of Public Works to be a “principal executive officer or a ranking elected official” that can sign the NOI and NOT. Therefore, no change has been made.

Comment 233: Part VII.H.4. - Should a County be required to utilize the “MS4 SWPPP Acceptance” form signing authority should be as noted in the preceding comment. This

section also notes that improper signature of any required document constitutes a permit violation. As long as the document is signed by an officially designated responsible local official determination of permit violations should be focused on items that make a physical difference in the management of stormwater. (69)

Response: See response to Comment 232. With regards to the second part of this comment, the Department has noted the comment but has decided not to change this requirement.

Comment 234: Part VII.H.2. – Can the Department provide examples of “other information requested by the Department” as it applies in this section?

Response: This could include, for example, the report that gets generated as part of a hydrology analysis, the results of deep soil test pits, or infiltration test results.

Comment 235: Part VII.H.2.c. – Does this mean the authorization is not required to be submitted to the Department prior to any requests for the SWPPP? Does this information need to be submitted to the DEC and local agency any more. (80), (87)

Response: The authorization should be attached to SWPPP and only submitted to the Department upon request.

Comment 236: Part VII.H.2.a. - Can the authorization be submitted by e-mail. (87)

Response: See response to Comment 235.

I. Property Rights

Comment 237: Should the word “injury” be revised to “damage”. (87)

Response: The Department feels that the term “injury” is appropriate, therefore, no change has been made. In addition this was the language used in the previous general permit, GP-02-01.

J. Severability

Comment 238: What does “is held invalid” mean. (87)

Response: This terminology basically means that “if a court or administrative body were to determine it invalid”.

K. Denial of Coverage Under This Permit

Comment 239: It is suggested that the word “business” be placed before (did comment mean after?)“180 days”. (84)

Response: This language comes directly from 6 NYCRR Part 750 (see Part 750-1.21(e)(2)).

Comment 240: The term “alternative SPDES general permit” should be italicized here and defined in Appendix A. (87)

Response: Comment noted. However, the Department does not feel that this is necessary at this time.

Comment 241: The term “ alternative authorization” in paragraph 1. Should be defined. (87)

Response: Comment noted. However, the Department does not feel that this is necessary at this time.

L. Proper Operation and Maintenance

Comment 242: Part VII.L. includes “Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures”. Are these requirements applicable to SMPs? If so, please identify what laboratory controls will be required. (26)

Response: The Department feels this language is confusing and therefore, has deleted it from this requirement.

M. Inspection and Entry

Comment 243: Should this section specifically state the “regulated, traditional land use control MS4” and not just the MS4 receiving the discharge. Some projects may discharge directly into surface waters within an MS4, which then flows into another MS4 or straight into surface waters of the State. (28)

Response: The Department feels the language is correct so no changes were made.

Comment 244: Inspectors need to allow for reasonable notice. There are cases where the safety and security of the inspector and/or the operations require an escort and/or time to ensure that conditions are appropriate (shut down equipment, notify personnel performing certain tasks, etc.). (62)

Response: Comment noted.

Comment 245: This section should be more specific on what staff, particularly in the case of the local MS4, is considered "authorized" . The clarification should include how, and by whom, this designation is made, and how the regulated community is to know who is considered authorized . (84)

Response: This is beyond the scope of the general permit. The Department does not have the authority to specify who would be considered “authorized” by a local MS4.

N. Permit Actions

No Comments

O. Definitions

APPENDIX A - Definitions

Comment 246: We support the concept of qualifying inspectors by receiving a minimum training. We are concerned with the timing and availability of DEC endorsed training. Consider delaying implementation of this requirement by establishing a grace period. Does the DEC intend to “grandfather” individuals who are qualified to perform inspections under

the current permit. (7), (80)

Response: The Department has included a grace period in the general permit. Only those individuals that meet the qualifications included in the definition of “Qualified Inspector” will be allowed to perform the inspections.

Comment 247: Include a definition for “temporary stabilization”. (11)

Response: The Department has provided a definition for “temporary stabilization” in Appendix A of the new general permit.

Comment 248: Expand on definition for “Construction Activity (ies)” and “Qualified Professional” (see suggestions in comment letter). The definitions should be consistent with definitions in MS4 GP. (25)

Response: Comment noted. The Department feels that the existing definitions are adequate. The Department has checked the definitions to ensure they are consistent with those provided in the MS4 permit.

Comment 249: “Final Stabilization” should include impervious coverage identified in the SWPPP.

“Impervious Area” should include dirt roads.

“Larger Common Plan of Development of Sale” should include a time period during which disturbance construction activities might occur.

“Municipal Separate Storm Sewer” subsection (i) should include Villages.

“Qualified Professional” should include CPESC or CPSWQ certified individuals. (26)

Response: The definition for “Final Stabilization” includes language to address impervious area identified in the SWPPP (“... areas that are not covered by permanent structures, concrete or pavement.”). The Department does not feel that dirt roads should be included in the definition of “Impervious Area”. The Department has, however, included compacted gravel roads in the definition of “Impervious Area”. The definition of “Larger Common Plan of Development of Sale” comes from EPA guidance. Their guidance did not include a time period for different construction projects to be considered part of the “Larger Common Plan of Development of Sale”. The definition for “Qualified Professional” has been revised to state “including, but not limited to”. This will allow the Department to evaluate, on a case by case basis, other certification (training) programs on the design of post-construction stormwater management practices and then determine whether individuals with this certification (training) can be considered a “Qualified Professional”. The Department has decided not to explicitly include CPESC or CPSWQ in the definition of Qualified Professional at this time. The Department may, however consider such qualifications appropriate in limited cases (e.g. where the design does not require engineering).

Comment 250: There is no certifying organization for a “qualified Soil Scientist” in New York, therefore we recommend that this title be removed from the list of “qualified inspectors”. Without a certifying organization anyone could say that they are a qualified soil scientist. Another comment recommends that this definition reference the public and/or private programs for certifying soil scientists. (27), (85)

Response: The Department has removed “qualified Soil Scientist” from the list of individuals that can be considered a “Qualified Inspector”. However, a Soil Scientist can still perform the site inspections if they are working under the direct supervision of a licensed Professional Engineer or

licensed Landscape Architect and have received the required training.

Comment 251: “Direct discharge” should be defined. Does this mean that the construction activity has to be either on the shoreline of a waterbody or with a pipe that goes directly from the construction activity in order to be considered a direct discharge. (36)

Response: A definition for “Direct Discharge” has been added to the general permit.

Comment 252: Please provide additional information on how the area of disturbance is calculated for clearing activities (i.e., is it limited to equipment haul routes or does it encompass the entire limit of clearing). Additionally, in-place grinding of trees, in which the root ball remains intact and chipped wood is evenly distributed over any disturbed areas, should be considered a routine maintenance activity and therefore exempt from the requirement to obtain permit coverage. (37)

Response: The area of disturbance for a clearing activity shall include all areas where soil is exposed as a result of any clearing, grading or excavation activities. This shall include the haul roads and any tree clearing areas that result in the exposure of soil. With regards to the second part of this comment, if the disturbed area associated with this tree clearing activity will be greater than one acre, the owner must obtain coverage under general permit prior to commencing construction activities.

Comment 253: The impervious area definition is too encompassing. There are not varying degrees of imperviousness or impermeability. A surface is either impervious or not. To expand the definition to include areas that “can not effectively infiltrate rainfall” is inappropriate. We concur that there are surface other than rooftops and pavement that may be impervious; however, classifying all gravel surfaces as impervious is incorrect. Non-compacted or poorly graded gravel surfaces will allow rainfall to infiltrate and should not be considered as impervious area. (37)

Response: The definition for “Impervious Area” was taken from the NYS Stormwater Management Design Manual. An owner or operator should consult with Regional Office stormwater staff if they feel a certain type or condition of gravel should not be considered impervious.

Comment 254: A grace period should be provided for the qualified inspectors to obtain their DEC endorsed training required in the definition of “qualified inspector”. In addition, the TA/CC currently provide training to inspectors. Additional training every three years would prove excessive and impractical. (37)

Response: The Department has updated the general permit to include a grace period for qualified inspectors to comply with the training requirement.

Comment 255: The definition for “qualified inspector” includes a requirement for 8 hours of training. Most one day courses are not a full 8 hours. Will this meet the requirement in the permit? (57)

Response: This requirement has been changed to four (4) hours.

Comment 256: The definition for “qualified inspector” does not include CPESC nor staff working under the direct supervision of a licensed PE as previously allowed under the

DEC/DOT MOU. This category of staff should be included in the definition. (37)

Response: The definition includes CPESC and staff working under the direct supervision of a licensed PE.

Comment 257: Does the definition of pollutant include soil sediments? What about water volume (too much or too little)? (40)

Response: The Department feels that soil sediments would fall under the pollutant “sand” included in the definition. The definition of “pollutant” comes from 6 NYCRR Part 750-1.2(a)(66).

Comment 258: Define construction activities to clarify the difference between silviculture and construction activity. (40)

Response: Question 14 in Version 3 of the “Frequently Asked Questions About Permit Requirements of the SPDES General Permit (GP-02-01) for Stormwater Discharges from Construction Activities” document dated September 12, 2006 addresses this comment. See the following:

“14. Are silvicultural activities exempt from storm water permitting?”

A: Yes, to an extent. §122.26(b)(14)(ii) contains several groupings of activities, including the Major Standard Industrial Classification ("SIC") Group 24, "Lumber and Wood Products, Except Furniture". This major SIC group includes establishments primarily engaged in the cutting of timber and includes, for example, logging establishments and sawmills. Establishments listed under Major SIC Group 08, "Forestry", are not listed as an "industrial activity" under 122.26(b)(14) and, therefore, are not subject to NPDES permitting.

However, 40 CFR 122.27 provides an exemption for nonpoint source silvicultural activities including harvesting operations, nursery operations, site preparation, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, surface drainage, and road construction and maintenance, even if the nonpoint runoff results in a point source discharge. This exemption from the NPDES storm water permitting requirements, however, does not preclude the need to obtain other permits which may be necessary such as, for example, a permit under section 404 of the Clean Water Act. Additionally, any such discharge that causes or contributes to a violation of a water quality standard is a violation of State law with a penalty of up to \$37,500 per violation per day.

Silviculture is considered as an on-going practice involving the dedicated and cyclic use of land expressly for the periodic production of timber. The mere harvesting of timber does not constitute silviculture. For example, clear-cutting and the harvesting of timber as a one-time, non-recurring practice, is not considered an exempt silvicultural activity under 40 CFR 122.27 and, in fact, may be an activity identified under 40 CFR 122.26(b)(14) and subject to NPDES permitting if the total land disturbance is one or more acres. Land disturbance for regulated timber harvesting projects is defined as soil exposure resulting from clearing, grading and excavation (cuts and fills). The cutting of trees or brush hogging, with no stump removal, does not constitute a land disturbance.

In order to successfully demonstrate "silviculture", a landowner should present a forest management plan, prepared by a resource management professional (forester), that shows sound

forestry intent, goals, forethought, addresses the condition of the residual stand and makes provisions for future forest regeneration; or they should at least be able to discuss their plans with respect to the future of the property staying in forest use. By providing such acceptable evidence of intent to practice silviculture, or “sustainable forestry”, the landowner then simply needs to adequately protect water and soil resources, as required under Article 15, through use of accepted timber harvesting “Best Management Practices” (BMP’s), and is not required to prepare a Soil Erosion and Sediment Control Plan or obtain coverage under GP-02-01. Landowners may refer to the “New York State Forestry Best Management Practices for Water Quality” field guide, available from DEC Forestry offices, for advice and guidance on selection and installation of appropriate BMP’s for silvicultural operations.

Exempt silvicultural activities include the felling, skidding, preparation (e.g., delimiting and trimming), loading and initial transport of forest products from an active harvest site. It is also interpreted to include the incidental stacking and temporary storage of harvested timber on the harvest site prior to its initial transport to either an intermediate storage area or other processing site. The processing, sorting, or storing harvested timber which has been transported from one or more active harvesting sites are not silvicultural activities that are exempt from NPDES permitting requirements.”

Comment 259: The definition of construction activity mentions cutting and removal of trees or brush. Is the cutting of brush okay if the roots are not pulled. (47)

Response: Typically, the answer is yes. The Department has revised the definition of Construction Activity(ies) as follows to clarify this issue. “*Clearing activities can include, but are not limited to, logging equipment operation, the cutting and skidding of trees, stump removal and/or brush root removal.*”

Comment 260: Definition of construction activity - National Grid believes that its vegetation maintenance activities conducted on existing ROWs comprise routine maintenance and are therefore not considered to be construction activities. Where clearing of new ROWs does not involve grubbing and stump removals, National Grid does not feel such clearing should be considered activities subject to the GP and request this definition be modified accordingly. (58)

Response: If the vegetation maintenance activities will include logging equipment operation, the cutting and skidding of trees, stump removal and/or brush root removal that disturbs one or more acres of land, the owner will be required to obtain coverage under the general permit. See response to Comment 259 also.

Comment 261: Definition of impervious area - National Grid feels that gravel roads installed on utility ROWs for linear utility projects should not be considered to be impermeable surfaces, for the purposes of requiring post-construction SMPs. National Grid request that such gravel roads be excluded from this definition. (58)

Response: See response to Comment 253.

Comment 262: Definition of Owner or Operator- During construction, the legal responsibility for the site is typically turned over to the contractor. Please clarify what “operational control over the construction plans and specifications” means. Does DEC

intend for the actual legal owner, or the contractor to sign the NOI and be liable/responsible for site stormwater. (62)

Response: The term “operational control over the construction plans and specifications” means that an entity has the ability to authorize changes to the plans and specifications that have been prepared for a project. Typically, this is the entity that paid for the plans and specifications to be prepared. Most often, it is the owner of the project. However, it can also be an entity that is leasing the property or an entity that has obtained an easement or right-of-way from the property owner to develop the land in some way. It is not the Department’s intent to have the contractor sign the NOI form.

Comment 263: The definition of “Commence Construction Activities” should include the specific activities within a demolition project that disturb soil; or “soil disturbance” should be defined separately.

(64)

Response: The Department feels that the definitions of “Commence (Commencement of) Construction Activities” and “Construction Activity(ies)” adequately address this comment.

Comment 264: The definition for “Qualified Inspector” should not require that a person have completed training within 3 years to be considered knowledgeable in the principles and practices of E&SC. (64)

Response: Comment noted. However, the Department feels that training in the proper implementation of erosion and sediment controls is beneficial to all parties that provide oversight at a construction site.

Comment 265: The definition entitled "Qualified Inspector" has been added which is now separate from the "Qualified Professional". This appears that almost anyone is qualified to do the inspections (with minimal training), which, in many cases requires experience and knowledge to make quick informed solutions to problems that might arise in the field. I also noticed that CPESC's are no longer considered "Qualified Professionals" even though by their very nature are "Certified Professionals" in the field whereas a licensed Professional Engineer or Landscape Architect may not have any experience in this particular field. I believe this to be a step backward in a time where I was beginning to believe we were making some headway. These definitions should be re-evaluated as it misrepresents who can and should be doing the required inspections and devalues the Professional Certifications of those who have the previously recognized experience and knowledge for preparing SWPPP's, inspecting sites and providing solid solutions for potential problems that could degrade the environment. (68), (87)

Response: The individuals that can perform inspections as part of the new general permit has not changed from what was allowed by GP-02-01. See questions 35 and 36 in Version 3 of the “Frequently Asked Questions About Permit Requirements of the SPDES General Permit (GP-02-01) for Stormwater Discharges from Construction Activities” document dated September 12, 2006. The term “Qualified Professional”, as used in the Part III.A. of the new general permit, refers to the individuals that can prepare a SWPPP that requires post-construction stormwater management practices. These individuals must have an understanding of the principles of hydrology, water quality management practice design, water quantity control design, and, in many cases, the principles of hydraulics in order to prepare a SWPPP that conforms to the Department’s technical standard. The new general permit does not include qualification

requirements for individuals preparing a SWPPP that only requires the erosion and sediment control component.

Comment 266: The definition of Qualified Inspector is ". . . a person that is knowledgeable in the practices of erosion and sediment control, such as licensed Professional Engineer, Certified Professional in Erosion and Sediment Control (CPESC), licensed Landscape Architect, or qualified Soil Scientist." DEC staff at outreach meetings for these draft permits has indicated that the intent of the wording is to provide examples of qualified professionals that may be "knowledgeable", not to limit the field of potential inspectors to the professions listed. As such, it is suggested to replace "such as" in this definition with "including, but not limited to" . At a minimum DEC needs to clarify whether these descriptions are inclusive or exclusive. It is also suggested to include "Certified Professional in Storm Water Quality (CPSWQ)" and "Certified Erosion, Sediment and Storm Water Inspector (CESSWI)" in the list. It is also suggested that DEC consider a training exception for CPESCs, CPSWQs, and CESSWIs. Persons with these certifications have their own continuing education requirements. (84)

Response: The definition for “Qualified Inspector” has been revised to address this issue. The new language will allow the Department to evaluate, on a case by case basis, other certification (training) programs on erosion and sediment control practices and then determine whether individuals with this certification (training) can be considered a “Qualified Inspector”. With regards to the comment dealing with training, the Department has revised the language in the definition of Qualified Inspector that addresses the qualifications for people working under the supervision of a licensed Professional Engineer or licensed Landscape Architect. The Department intended to say “Training in the principles and practices of erosion and sediment control means that an individual performing a site inspection... in the last three (3) years.”, not “Knowledgeable in the”. The Department did not intend for this training requirement to apply to CPESC that have a current certification. The Department has decided not to explicitly include "Certified Professional in Storm Water Quality (CPSWQ)" and "Certified Erosion, Sediment and Storm Water Inspector (CESSWI)" in the definition of Qualified Inspectors at this time. See revised definition.

Comment 267: The definition of Qualified Professional is ". . . a person that is knowledgeable in the principals (sic) and practices of stormwater management and treatment, such as licensed a Professional Engineer, or licensed Landscape Architect." DEC staff at outreach meetings for these draft permits have indicated that the intent of the wording is to provide examples of qualified professionals that may be "knowledgeable", not to limit the field of potential qualified professionals to the professions listed . As such, it is suggested to replace "such as" in this definition with “including, but not limited to". At a minimum. DEC needs to clarify whether these descriptions are inclusive or exclusive. It is also suggested to include "Certified Professional in Storm Water Quality (CPSWQ) in the list. Another comment recommends that the definition specify that the PE’s and RLA’s must be licensed in New York State to be classified as “qualified”. (84), (85)

Response: The definition for “Qualified Professional” has been revised to address this issue. The new language will allow the Department to evaluate, on a case by case basis, other certification (training) programs on the design of post-construction stormwater management practices and then determine whether individuals with this certification (training) can be considered a “Qualified

Professional". The Department has decided not to include "Certified Professional in Storm Water Quality (CPSWQ)" in the definition of Qualified Professional at this time. With regards to the comment on the PE's and RLA's being licensed in New York State, the NYS Education Department has rules and regulations that apply to licensed professionals preparing plans in New York State. Therefore, the Department does not feel it is necessary to include this as a requirement in the general permit.

Comment 268: The "larger common plan of development or sale" (LCPD) concept can be difficult to apply for non-traditional MS4s. Given the significantly smaller jurisdictional boundaries and limited physical size associated with most non-traditional MS4s, such as a hospital, prison, or college, etc., maintaining a separation distance of at least ¼ mile as evidence that unrelated projects are not part of a LCPD (as stated in the definition) may not be practical or possible. Concurrent, but unrelated projects within the boundaries of a small, non-traditional MS4 are common and likely to overlap, especially where constructing one or more structures, or replacing aging infrastructure is occurring, but not as part of the same facility project, i.e., a LCPD. Therefore, KAPL recommends that the Department provide clarification on the applicability of the LCPD concept for non-traditional MS4s where these activities are most likely to occur. Additionally, KAPL seeks clarification from the Department on their intent to apply the LCPD concept in situations where any type MS4 (traditional land use, traditional non-land use, and non-traditional) adopts long range development plans. For example, a municipality may develop a number of individual construction projects as part of a 20-year plan to redevelop areas within its jurisdiction. Similarly, a non-traditional MS4, such as a school or university, may develop a number of construction projects to replace existing structures or add new ones as part of a long range facility plan. Does the Department view the long range plan as the larger common plan of development or sale; or does the Department consider individual projects where construction activities are phased (such as a commercial business complex or shopping mall) as the type of scenario targeted by the LCPD concept? (80)

Response: If an owner has a long-range master plan of development where some portions of the master plan are conceptual, rather than a specific plan of future development, and the future construction activities would, if they occur at all, happen over an extended time period, they may consider the "conceptual" phases of development to be separate "common plans" provided the periods of construction for the physically interconnected phases will not overlap. By overlap we mean that an owner has finalized the site development plans for one of the conceptual construction projects from the master plan and commences construction on that project before the construction on a previously planned project is complete.

Comment 269: Under the current permit, GP-02-01, inspections must be performed by a qualified professional, or by a person who performs the inspection under the guidance of a qualified professional. The definition provided in GP-02-01 gives examples of qualified professionals. KAPL recommends that the Department include in the definition persons who are a Certified Professional in Stormwater Quality (CPSWQ), a Certified Erosion, Sediment, and Stormwater Inspector (CESSWI), or a degreed Civil, Mechanical, or Environmental Engineer, regardless of professional certification, as long as they have training or experience in erosion and sediment control practices and protocols. (80), (84)

Response: See responses to comments 265 - 267.

Comment 270: Does the definition of “Commencement of Construction Activities” include the installation of erosion and sediment control practices required in the SWPPP? For example, the installation of a sediment trap required in the SWPPP will involve excavation and disturbance of soil. Is this considered an “initial disturbance of soil” as described under the definition? (80)

Response: Yes, the definition does include the installation of erosion and sediment control practices. The definition of “Commence (Commencement of) Construction Activities” has been updated to provide additional clarification. With regards to the second part of this comment, the installation of a sediment trap is considered an initial disturbance of soil.

Comment 271: The definition of “Construction Activities” includes stockpiling activities. Can the Department provide clarification on their intent or under what circumstances stockpiling activities would apply? In addition to soil, what materials would be included as stockpiles? Do stockpiled soils count towards the total disturbed area for determining whether a project will disturb one (1) or more acres? (80)

Response: The Department defines soil disturbance as the exposure of soil. Therefore, since the stockpiling of fill material will result in the exposure of soil, it is considered a regulated land disturbance. The stockpiling of any soil material will be considered a regulated land disturbance and needs to be figured in when calculating the total area of disturbance.

Comment 272: Under the definition for “Final Stabilization”, are geotextile fabrics and tarps considered equivalent stabilization measures? (80)

Response: These materials are typically not accepted as stand alone, final stabilization measures. However, depending upon the application, they may be used as acceptable temporary stabilization measures.

Comment 273: In the definition of Construction Activity(ies), Routine maintenance performed to maintain the original grade...” should be restricted to a certain amount or size of disturbance to prevent abuse. (85)

Response: Comment noted. However, the Department does not feel the suggested restriction is necessary.

Comment 274: The definition of “Groundwater” does not recognize seasonal variations in saturated zones. The City recommends amending the definition to read “water in the seasonally saturated zone.” The Design Manual does not define “groundwater”, although groundwater is referenced in the design requirements for ponds and infiltration practices relative to respective minimum vertical separation distances. (85)

Response: The definition in the permit comes directly from 6NYCRR Part 750.

Comment 275: The definition of “Larger Common Plan of Development or Sale” includes several examples of an “announcement or piece of documentation” that proves the existence of a “plan”. The City suggests adding “SEQRA application” to this list of examples. Later, this definition describes situations where discrete projects within a common plan of development may be treated as separate plans of development or sale. The reasoning behind treating projects at least 1/4 mile apart as discrete is unclear. In addition to considering geographic distance, DEC should treat neighboring projects as discrete only when they are hydrologically independent of one another (i.e. the projects discharge runoff to different

design points and project limits do not overlap respective drainage areas). (85)

Response: The Department has added “SEQRA application” to the definition. With regards to the second part of this comment on treating projects that are at least 1/4 mile apart as separate projects, this is consistent with the requirement the EPA established in their general permit for stormwater discharges from construction activity. Please refer to EPA’s Fact Sheet on their construction permit entitled “NPDES General Permit for Storm Water Discharges From Construction Activities - Fact Sheet” as modified effective January 21, 2005.

Comment 276: The definition of “Surface Waters of the State” excludes “private waters that do not combine or effect a junction with natural surface or underground waters”. An example of this type of private water should be provided for clarification. (85)

Response: The definition in the permit comes directly from 6NYCRR Part 750. An example of such a private water would be a swimming pool.

Comment 277: From the definition of “surface water” it would seem that discharges to groundwater are excluded from this permit. If that is the case, how can the infiltration SMPs be authorized by this permit. However, “SPDES” as defined in the appendix includes discharges to waters of the state. This permit is a SPDES and waters of the state include groundwater so there seems to be some ambivalence. Also, 6NYCRR Part 750-01 and Appendix A of the permit defines discharges in the context of waters of the state, which include groundwater. (87)

Response: Discharges of stormwater to groundwaters are exempt from general permit requirements unless the Department determines that such discharges (or class of discharges) are significant contributors of pollution. To date, the Department has not determined that construction site discharges to groundwater are significant contributors of pollutants.

Comment 278: Is the “stockpiling of fill material” (in the definition of Commence Construction Activities) really a land disturbance. If a stockpile is completely removed except for an inch, and the soil beneath is not touched by equipment, grass will eventually regrow. (87)

Response: The Department defines soil disturbance as the exposure of soil. Therefore, since the stockpiling of fill material will result in the exposure of soil, it is considered a regulated land disturbance.

Comment 279: “Discharge” definition - This definition conflicts with the definition of SPDES GP because it includes GW. “Discharges” are included in the definition of SPDES GP but this definition would imply that GW is excluded. (87)

Response: See response to Comment 277.

Comment 280: Should the word “require” in the last sentence of the Qualified Inspector definition be replaced with “include”. (87)

Response: The Department has made this change.

Comment 281: “Stream bank restoration projects” should be removed from the “Routine Maintenance Activity” definition since these projects can involve riprap placement and extensive grading, placement of RECM, and other invasive ESC measures. (87)

Response: Comment noted. However, the Department feels that stream bank restoration projects

meet the definition of Routine Maintenance Activity.

Comment 282: The definition of “Surface Waters of the State” contradicts the language in Part I.B.1 of GP-02-01. In addition, this definition is not clear but it seems to indicate that infiltration is not acceptable because it discharges to GW and this definition excludes that. (87)

Response: See response to Comment 277.

APPENDIX B - Required SWPPP Components by Project Type

Comment 283: Table 1(?- 2) calls out landfills as a construction activity that requires the preparation of a SWPPP with post-construction SMPs. Since landfills and their associated construction activity is already covered by the Multi-Sector Industrial Permit, the inclusion in Table 2 is confusing. DEC should remove landfills from Table 2. Mining which is similarly covered by the MSGP is not included in table 2. (22)

Response: The Department included landfills in Table 2 because there may be a landfill project that is not subject to the Multi-Sector Industrial Permit. For example, the construction of a cover system on an old, inactive landfill.

Comment 284: Table 2, 11th bullet should be Table III in the Agricultural Management Practices Catalog...”. (26)

Response: The reference to Table II is correct, therefore, no change was made. Please refer to the “Agricultural Management Practices Catalog for Nonpoint Source Pollution in New York State”.

Comment 285: The definition for impervious area should exclude artificial turf fields since the DEC has inappropriately classified these fields as impervious. Artificial turf fields typically pass and hold rainfall rather than sheet flow rainfall to adjacent areas. (29)

Response: If the design of most pervious pavements include an under drain system (particularly in the absence of natural ground's infiltration). There is a rapid discharge from the pipes as soon the flow in storage reservoir reaches the pipe. Modeling such systems requires a modified hydrology that is different from a porous area time of concentration calculation and curve number. While porous pavements are relatively effective for hydrologic source control, such practice are not considered effective treatment systems. In the case of artificial turfs, there are no documented studies on the content of discharge due to contact with the fill media. DEC Division of Solid & Hazardous Waste is undertaking a study on the leachate of metal and semi-volatile organic from the rubber material to ground and surface water. Before research studies offer conclusive findings on the quality of such discharges, a minimum level of treatment should be provided for the discharges from such collection systems.

Comment 286: Include a third table that identifies routine maintenance activities for which permit coverage is not necessary. Include those routine maintenance items identified in the definition as well as in-kind replacement of buried pipelines or utilities, routine maintenance activities identified on the DEC/DOT MOU, in-place grinding of trees, bank stabilization or maintenance work along existing waterways, utility rights of way, and highways when no change in hydrology occurs, and other reoccurring activities of short duration or limited extent that are appropriately handled through BMPs. (37)

Response: The Department has updated the definition of “Routine Maintenance Activity” to

include the construction activities that have been identified as routine maintenance in Chapter 8, Appendix B of NYS Department of Transportation's Highway Design Manual.

Comment 287: It should be clarified that inclusion in Table 2 requires that post-construction SMPs *be considered in the SWPPP*, not that all projects included in Table 2 will require the construction of post-construction SMPs. For example, if a roadway project does not result in an increase in impervious surface and does not have the potential to discharge a pollutant of concern into an impaired water body, permanent controls are not needed. Road and parking lot construction and reconstruction should only require permanent controls in the event of water quality and quantity impacts as a result of the project. Furthermore, the definition of "reconstruction" activities needs further clarification. (37)

Response: The owner of a highway reconstruction project should refer to Chapter 9, Redevelopment Projects, of the New York State Stormwater Management Design Manual; Chapter 8, Appendix B of NYS Department of Transportation's Highway Design Manual and frequently asked question 40 and 40A in Version 3 of the Frequently Asked Questions About Permit Requirements of the SPDES General Permit (GP-02-01) for Stormwater Discharges from Construction Activities document dated September 12, 2006 to determine which highway projects require post-construction SMPs.

Comment 288: The flowchart in GP-02-01 was very helpful, why not have something similar in the new permit. (53)

Response: Tables 1 and 2 in Appendix B identify the SWPPP components that will be required for different construction activities.

Comment 289: It is National Grid's understanding that linear utility projects only require E&Sc plans, however Appendix B, Table 1 does not specifically include overhead utilities. National Grid requests that overhead utilities be specifically included in Table 1. Regarding the list of activities in Table 2 that require post-construction SMPs, National Grid believes does not feel that it is appropriate to include permanent access roads that are included with overhead electric transmission line projects. National grid request that permanent access roads be included in Table 1. (58)

Response: Table 1 has been revised to include over-head electric transmission line projects with no permanent access roads, parking areas or substations. Table 2 has not been revised as requested.

Comment 290: Demolition projects that do not include the redevelopment of the project site should be listed among the projects that require the preparation of a SWPPP that only includes E&SCs in Table 1. (64)

Response: Table 1 has been revised to include demolition projects where vegetation will be established on all disturbed areas and no redevelopment is planned.

Comment 291: Tables 1 and 2 in Appendix B are a nice addition to replace the old confusing flow chart. My concern is that this list may not be all inclusive and will still allow room for interpretation. (65)

Response: The Department is aware that there may be other types of construction projects not covered by the tables. Therefore, prior to preparing their SWPPP, an owner or operator of a construction activity that has not been listed in the tables should contact the Department to see

which components will be required for their SWPPP.

Comment 292: It is useful to have a table that clarifies exactly which disturbances require a permit. One specific area is the application of artificial turf. It has been our assumption that a turf field with an underdrain system probably exports greater pollutant loads in the form of pesticides and has somewhat similar hydrology to an artificial turf field. It may be useful to distinguish between natural turf and natural turf with underdrain systems, and possibly treat the conversion of turf with underdrains to artificial to artificial turf as a redevelopment project. (74)

Response: See response to Comment 285.

Comment 293: Table 1 - In the list of projects that require permit coverage but the SWPPP only includes an erosion and sediment control plan, "sidewalk . . . reconstruction projects that are not part of a road/highway construction or reconstruction project" should be considered a "Routine Maintenance Activity", and therefore not included on this list. (84)

Response: The Department has revised Table 1 to include new sidewalk construction only, not sidewalk replacement or reconstruction. Construction activity that involves the replacement or reconstruction of sidewalks is considered Routine Maintenance Activity. The definition of Routine Maintenance Activity has been revised accordingly.

Comment 294: Further elaboration on the phrase “provided that the projects do not alter hydrology from pre- to post-development conditions” would be helpful. It is not clear how “alteration” of hydrology would be defined or measured. (85)

Response: A definition for the term “Alter Hydrology From Pre to Post Development Conditions” has been added to Appendix A.

Comment 295: Table 2 lists “road construction or reconstruction” as an activity that, if it exceeds one acre in size, requires the preparation of a SWPPP, including post-construction SMPs. Under the definition of “redevelopment” in the Design Manual (Chapter 9), road reconstruction projects constitute “redevelopment” (and thus require SWPPPs) only when they involve “soil disturbance”. Many urban roadway reconstruction projects do not. Accordingly, the City suggest that Table 2 should be revised to indicate that a road reconstruction requires SWPPP preparation only if it entails soil disturbance. (85).

Response: Part I.A. addresses this concern, therefore, no changes were made.

Comment 296: Table 1 - “Land clearing and grading..., excluding projects that alter hydrology from pre to post development conditions”. How can clearing and grading not alter hydrology to some extent? (87)

Response: See response to Comment 294.

Comment 297: Table 1 - “Nonpoint Source ...in New York State, excluding projects that involve soil disturbance of less than five acres...”. Why less than 5 acres, is this a typo? (87)

Response: This was established in the Memorandum of Understanding between the Department, NYS Soil and Water Conservation Committee, and NYS Department of Agriculture and Markets For Implementation of Agricultural Best Management Practices In Conformance with the SPDES General Permit For Stormwater Discharges From Construction Activity, GP-02-01.

APPENDIX C - Watersheds Where Enhanced Phosphorus Removal Design is Required

Comment 298: Include the Lake Champlain watershed on the list of areas that will require a SWPPP that includes post-construction stormwater management practices designed in conformance with the Enhanced Phosphorus Removal Design Criteria. The ecological integrity of Lake Champlain watershed would greatly benefit from the additional protection against phosphorus loading. (12)

Response: The Department has decided not to make this change at this time since the base requirements of the general permit can adequately address pollutant reductions in this watershed.

Comment 299: Will maps included in Appendix C- E be available in more detail and on our website? (40)

Response: The Department will be updating the Interactive Stormwater Map on our website to include each of these maps as a new layer. The Interactive Stormwater Map includes a tool which allows an owner or operator to zoom to their project site.

Comment 300: DEC should include these watersheds in its Interactive Map and reference this availability in the permit. (84)

Response: See response to Comment 299.

Comment 301: This Appendix refers to the “Enhanced Phosphorus Removal Design Criteria”. Where is this material in the Design Manual. (87)

Response: The Department expects to have the “Enhanced Phosphorus Removal Design Criteria” finalized by the time the new general permit is issued. If the document has not been finalized by the time the general permit is issued, the Department intends to include a grace period in the general permit for owners having to meet this design criteria.

APPENDIX D - Watersheds Where 5000 SF Disturbances and Greater Must Obtain Permit Coverage

No comments received on this Appendix.

APPENDIX E - Map of Watershed Areas (HUC 11) Associated With AA and AA-s Classified Waters

Comment 302: The maps in this Appendix should be replaced with a list of waterbodies with these classifications. A map should only be included if it delineates areas that are tributary to AA and AA-s waterbodies. Use of HUCs for the map in the draft permit results in inaccurate mapping of the AA watersheds. It appears that HUCs without any AA waters were erroneously included. (20)

Response: The Department had developed a map which shows the areas that are “tributary to waters of the state classified as AA and AA-s”. A paper version of this map was included in the draft general permit. In response to comments received during the public comment period, the Department is updating this map to address some inconsistencies. Because of these mapping changes, the paper version of the map has been removed from Appendix E in the final permit. Instead, the Department will be updating the Interactive Stormwater Map on our website to include these Watershed Areas as a new layer. The Interactive Stormwater Map includes a tool which allows an owner or operator to zoom to their project site.

Comment 303: DEC should include these watersheds in its Interactive Map. The map as shown is inadequate for identifying the applicable watersheds. (84)

Response: See response to Comment 302.

APPENDIX F - List of 303(d) Segments That Require SWPPP with Post-Construction Stormwater Management Practice

Comment 304: The 303d segments should be mapped or better defined. DEC should also make the distinction on the Interactive Map as to which 303(d) list waterbodies are listed on the 2006 303(d) list, which ones are listed in the construction permit, and which ones are listed in the MS4 permit. (84) (36)

Response: The segments can be viewed by going to the following website:

<http://www.nysgis.state.ny.us/gisdata/inventories/details.cfm?DSID=1117>

Only the 303(d) segments listed in Appendix F (Appendix E in final permit) apply to the construction general permit.

APPENDIX G - DEC Regional Office Contact Information

No comments received on this Appendix

GENERAL COMMENTS

General

Comment 305: In a number of locations in the permit(s), the term, “such as” is used to provide guidance relative to the definition/description of other terms. How does the Department define the term “such as” when used in the permits? Does it mean “for example” (flexible), or does it mean “that is” (restrictive)? (80)

Response: The term “such as” when used in this permit typically means “including, but not limited to”. The Department has revised the definitions for “Qualified Professional” and “Qualified Inspector” to state “including, but not limited to” rather than “such as”.

Comment 306: In the past 5 years of the NYS Stormwater Phase II program, the Department has used the internet to promulgate changes to guidance materials, required forms and interpretations. The regulated community could only find out about these available materials if it routinely accessed the Department’s internet sites. Some of the guidance material and required forms were necessary to maintain compliance with the permits/regulations. Has the Department considered using the “owner / operator” or “permittee” database to provide e-mail notification whenever there is a change affecting compliance with the permits, such as a revised form? (80)

Response: The Department maintains a list of consultants, municipal officials, and other entities that have been involved with the Department’s stormwater program for construction activity. The Department regularly notifies (via e-mail) the individuals on this list of any changes with the stormwater program.

Comment 307: DEC should address all existing FAQs in new permit. If this information will not be included in the new permit, are the FAQs enforceable? FAQs that are addressed in the permit must be exactly as presented in the FAQ document, otherwise there will be confusion and room for interpretation. (87)

Response: The Department has incorporated a number of the FAQ's in the general permit. However, a number of the FAQ's were intended to be guidance only so they were not incorporated in to the general permit.

Request For Hearing

Comment 308: We request a formal public hearing in the Watertown area, in order to express the technical experience that allows insight contrary to the proposed regulation to prohibit disturbances greater than 5 acres at any one time between Nov 1 and March 1. (81)

Response: The Department has removed this provision from the general permit, therefore, a hearing will not be necessary.

Permit Fees

Comment 309: DEC is urged to reduce their permit fees, especially in regulated MS4 areas.

Response: The Department's fees can only be changed by the legislature.

Comment 310: Develop a mechanism to delay the initial authorization fee until construction is started. (29)

Response: This is beyond the scope of the general permit.

Comment 311: Non-traditional MS4s should be exempt from the payment of the initial authorization fee. Additionally, we ask DEC to conduct an economic impact review of the requirements included in the proposed permit to ensure the environmental benefits to the state outweigh the costs of compliance. (37)

Response: The fees can only be changed by the legislature. The Department considers costs in development of permit requirements, although not the extent of a cost benefit analysis.

Comment 312: While we approve of having the MS4 becoming responsible for approving the SWPPP and thus allowing for only a 5-day DEC review (per Part II.B of the Draft Permit), our concern centers on fees and charges. The MS4's will charge the owner for this review and for subsequent field inspections, yet we see no where in the permit that any relief is proposed to the DEC fee structure. What we anticipate is that owners will now be subject to an MS4 permit fee on top of the current DEC fees, increasing their cost with no direct increase in service or return. (36), (66)

Response: The Department doesn't have the authority to regulate the fees that an MS4 may charge. The Department's fees can only be changed by the legislature.

EPA/ Re-Opener Clause

Comment 313: DEC has not addressed a "Re-Opener" clause which would discuss procedures for modification or revocation, water quality protection, and timing of permit modification. Please include a "Re-Opener" clause. (11)

Response: The general permit has been updated to include a Re-Opener Clause in Part VII “Standard Permit Conditions”.

Revision to NOI/NOT

Comment 314: EPA recommends that the NOI be revised to include a question that ask for the Water’s of the US that the site will discharge. (11)

Response: The Department has revised the Notice of Intent (NOI) to address this comment.

Comment 315: Will the NOI and NOT be updated? Will the DEC notify the MS4s when the new forms are complete? How will DEC notify the MS4s. Can we see a copy of these to review as well? (53), (57), (44)

Response: Yes, the Department will be updating both the NOI and NOT to address the changes in the general permit. Once the new NOI and NOT are complete, the Department will post them on the Department’s website.

Comment 316: What will the required SWPPP Preparer Certification statement consist of. (58)

Response: The SWPPP Preparer Certification statement is located on the new Notice of Intent that will be available on the Department’s website at the time the new general permit is issued.

Technical Standards Revisions

Comment 317: The Design Manual should stop using the outdated TP-40 for intensity-duration-frequency data, and instead use the more recent data developed by the Northeast Regional Climate Center. (13)

Response: NYSDEC has considered adopting the new precipitation data and is working with the Northeast Regional Climate Center (NRCC) and the Natural Resource Conservation System (NRCS) to address data gaps such as storm type distributions. The new precipitation values are adopted in the sizing criteria for enhanced phosphorus removal standards.

Comment 318: DEC should give consideration to including criteria in the Design Manual that would require designers address runoff volume (match pre-development runoff volume in post-development conditions), not just runoff rates. (18)

Response: The Department will consider this criterion in the future updates to the design standards.

Comment 319: DEC should give consideration to detaining a greater volume of stormwater runoff for designs that include extended detention. (18)

Response: The 90 percentile storm is selected for statewide sizing criterion based on the optimal small storm frequencies. The new Enhanced Phosphorus Removal Standard requires capture and treatment of a larger storm in phosphorus limited watersheds. This increased sizing is determined specifically in relation with phosphorus particle size and effective treatment.

Comment 320: We support the stricter standards for activities within the NYC Watershed East of the Hudson. However, we request that additional standards be adopted that allow or require applicants to consider alternative technologies for reducing volumes, extended detention times, and treating existing total stormwater volumes, and that any new activities be

required to meet pre-construction volumes. (18)

Response: The Enhanced Phosphorus Removal Standards require evaluation of the site for infiltration based on the hydrologic soil group and routing of the flow through a Better Site Design technique or an infiltration practice. This requirement potentially results in reduction of runoff from 30 to 5% of impervious area, depending on the soil type. The modeling work performed to define these standards indicated that pollutant removal gain for additional extended detention time is not significant.

Comment 321: For projects in NYC Watershed East of the Hudson, SWPPPs must include post-construction SMPs consistent with Section 18-39 of the WR&R with an overall goal of no net increase in loadings over pre-existing construction conditions. (21)

Response: The adopted methodology for treatment in phosphorus limited watersheds is relying on an extensive modeling of treatment pathways in both storage and flow through systems. This study showed that capture and treatment of one year 24 hour storm provides 85% to 90% removal rate. An increased volume control did not result in significant greater treatment. This study utilized a unit processes approach which focused on phosphorus characteristics. The performance criteria defined in the enhanced standards is based on the most recent findings in science of stormwater and sets limits on effluent concentration, far more effective than reliance on percentage of removal. It must also be noted that increased size of treatment or installation of multiple practices to reach a numerical goal impose other limitations. As a general rule, irreducible concentration may lead to less effective downstream SMPs; maintenance hardship in large practices; or treatment failures such as anaerobic condition in deep storage systems.

Comment 322: The NYS Standards and Specifications for Erosion and Sediment Control is a manual based on tried and true procedures, but has not, and cannot keep pace with erosion control technology. This is especially true in New York state since the State does not operate a testing and validation program as done in other states. Too frequently, DEC staff has treated the Blue Book as the only acceptable design manual for implementation of BMPs. This causes the lack of innovation and a waste of time discussing the relevance of the manual. New technology used in accordance with manufacturer's recommendations and in accordance with testing protocols from California, Texas, Oregon or any other states that actually test materials must be adequate. (29)

Response: The Department has a process in place that allows for alternative practices and technologies to be used in New York State. This process requires an owner that wishes to use a practice that is not included in the New York Standards and Specifications for Erosion and Sediment Control to demonstrate that their design is equivalent to the Department's technical standard. In addition, the Department has accepted manufactured technologies based on the evaluation and certification performed by other states regulatory agencies. The Department is not opposed to extending this approach to proprietary practices that may be equivalent to the standards and specifications for erosion and sediment control as technologies become available and State resources allow.

Comment 323: Does the application of seed alone meet the definition of temporary stabilization or do they have to apply mulch also. (40)

Response: No, the application of seed alone does not meet the definition of temporary stabilization. A disturbed area must also be mulched in accordance with the requirements in the Standards and Specifications for Erosion and Sediment Control to be considered temporarily stabilized. In

addition, see the Standard and Specifications for Temporary Critical Area Plantings on page 3.3 and the Standard and Specifications For Mulching on page 3.29 of the Standards and Specifications for Erosion and Sediment Control.

Comment 324: The existing permits nor the draft permits provide assurance that the thermal requirements of SPDES are being or will be met. If part of the intent of a SPDES permit is to help maintain a suitable trout habitat in receiving waters, there should be some mechanism specified in the permit to ensure that happens. (48)

Response: State standards require capture and treatment of post construction runoff which generally provide a mechanism to help control thermal impacts. Flow through systems such as infiltration and filtering systems are effective in temperature reduction. Storage system may have adverse impact due to exposure to sunlight. The technical standards contain provisions such as shorter detention time to reduce the risk of increased temperature for discharges to sensitive water bodies.

Comment 325: The guidelines must be rewritten to include standards that require total post-construction volume of stormwater released from a construction site to be a minimum no greater than pre-construction volumes. There should even be consideration provided to reducing the volume in selected flood prone drainage basins. Stormwater volume can be prevented from increasing by requiring extended detention of the incremental stormwater that is caused by a new development. (49)

Response: See response to Comment 318.

Comment 326: The Construction Logbook in the Blue Book should be revised to reflect the requirements set forth in the new permit (time of inspection, description of weather and soil conditions, etc.)? (53)

Response: The Department agrees and will eventually update the technical standards. However, owners are reminded that they must comply with the requirements of the new general permit.

Comment 327: The application of the NYS Stormwater Management Design Manual to TNLUC and NT MS4s for post-construction stormwater management is still not fully developed. The bulk of the manual was intended to address new development in TLUC MS4s. (69)

Response: The NYS Stormwater Management Design Manual was revised in January of 2007 to include Chapter 9, "Redevelopment Projects". The Department feels that the design requirements included in this chapter address this concern.

Establish Grandfather/Transition Period for Certain Requirements

Comment 328: Several of our clients have incurred substantial expenses preparing and processing their SWPPP under current requirements. Many SWPPPs have undergone extensive review by DEC which confirmed that they comply with current permit. Some DEC reviews have included, for example, issuance of Findings under SEQRA. Applicants in these circumstances should not be burdened with revising their SWPPPs, including, potentially additional SEQRA review. DEC should incorporate a grandfathering or transition period into its implementation of the Draft SPDES permit. (24)

Response: The Department has included several grace periods in the general permit that address this comment.

Consistent Requirements Between MS4 and Construction Permits

Comment 329: Please ensure that the Construction Permit does not impose permit conditions that conflict with the MS4 permit. (29)

Response: The Department will make every effort to ensure that there are no conflicting requirements between the two general permits.

Effectiveness of GP-02-01/ Technical Standards

Comment 330: What has been the economic cost to the New York community? Has the program measurably reduced soil loss and measurably improved the quality of the waters of NY state? There are multitudes of wet ponds now installed across the state. Are they effective? DEC owes the stakeholders of New York such an evaluation and report. (36)

Response: The Department has not performed an analysis to evaluate or quantify the economic benefits or water quality improvements gained from stormwater regulations. Future implementation of the MS4 program and other studies/mechanisms may provide an opportunity and information for such analysis.

Comment 331: The treatment practices and standards outlined in the Design Manual should be evaluated and updated now that there have been 4 years of experience applying them to actual sites. (36)

Response: The Department has gained experience and collected information from more than a decade of implementation of the stormwater program and will incorporate lessons learned in the future updates to the design standards.

Developer vs. Builder Responsibilities - Subdivisions

Comment 332: Builders are not held responsible for individual lots after sale by a developer on sites that have not undergone final stabilization. Even with a signed statement acknowledging the requirement to be compliant with SWPPP and GP-02-01, it is our experience that there is a lack of accountability for the actions of the builder, which results in the developer being responsible for violations they did not commit or condone. Clarification should be provided for the responsibilities of developers and builders of residential subdivisions. (38)

Response: In subdivisions where the original developer has transferred ownership of some of the building lots to a home builder, the original developer must notify the home builder, in writing, of the requirement to obtain permit coverage by submitting a NOI to the Department. Once this home builder obtains coverage under the general permit, they will be responsible for implementing the measures included in the SWPPP that apply to the lots they own, unless other arrangements were made with the original developer. If the original developer feels that the home builder is not complying with the requirements of the general permit and SWPPP, they should notify Regional Office staff. See response to Comments 98 and 100 also.

Updates to Adopted Model Laws

Comment 333: There are several examples of changes to the permit which will require amendments to the newly enacted local laws. MS4 communities, in many cases have

expended considerable time and money to enact the model laws as presented by the Department. Contractor Certification is different than that in the State’s model local law. (65), (69)

Response: Although recommended by the Department, a regulated, traditional land use control MS4 that has adopted the Model Law (or equivalent law) is not required to amend their local laws to meet the requirements in the new general permit. The Department decided not to require this amendment since the owner of a construction activity is still required to obtain coverage under the general permit. Therefore, the owner must comply with the more stringent requirements of the general permit and local law.

Failure to Consider Loss of Cultural Resources

Comment 334: Article 14 of the NY Parks, Recreation and Historic Preservation Law requires agencies to consult with the Commissioner of Parks prior to undertaking any project “if it appears that any aspect of the project may or will cause change, beneficial or adverse, in the quality of any historic places or property listed on the state register or is determined to be eligible for listing on the state register by the commissioner.” There is no indication in the GP that DEC has fulfilled this consultative obligation. Although 14.09 further provides that agencies must file draft environmental impact statements with the DEC for all such actions, it is clear that DEC has failed to prepare the requisite impact statement, at best relying on the original negative declaration for these permits which was issued in 1992. Until this procedural defect is overcome, DEC may not issue the GP. (67)

Response: The Department has updated the general permit to address this comment.

Map of 4th Order Streams

Comment 335: A map of the 4th Order Streams would be helpful. This may be part of Standards revision rather than the permit. (74)

Response: There is currently no map available. An owner should use the method discussed in Section 4.7 “Stream Order Identification” of the New York State Stormwater Management Design Manual to determine the stream order.

FAQs

Comment 336: A FAQ defining “Pre-developed’ conditions would be useful as well. There is some debate regarding the redevelopment strategy as to whether pre-developed means “at the time of development” or “historic”. (74)

Response: The Department generally considers the pre-development condition to be the condition at the time of development.

Other

Comment 337. Stormwater Discharges in New York and the U.S. Continue to Cause Significant Impairments to Water Quality, Despite Permit Requirements (88).

Response: The Department agrees that stormwater discharges continue to cause significant impairments to water quality. However, that is not, per se, an indication that the stormwater permit program is not effective. The traditional municipal and industrial Clean Water Act permit

requirements took several permit terms to achieve broad effectiveness. Phase II stormwater permit requirements are, in clean water act permitting terms, relatively new. The first permit term is just being completed, during which, the MS4 permit emphasis was on developing stormwater management programs.

Permit requirements are also only one leg of the environmental protection scheme. In addition to good permit requirements, effective implementation includes active oversight (plan reviews, inspections, and compliance actions), science based standards, education and training, and assistance to permittees (including funding).

During the first permit term, the Department committed substantial resources to coordination of an expanded, statewide stormwater program. That program has gone beyond the traditional compliance activities to include outreach, training and partnership that has served to change the mind set of the regulated community. While there is clearly more to be done, those first cultural changes are often the most difficult.

Comment 338. The Draft Permit Contains Several Important and Commendable Improvements Over the Current Permit (88).

Response: Comment noted.

Comment 339. Meaningful and Effective Prevention of Construction Stormwater Discharges Will Require An Emphasis on Environmental Site Design and Low Impact Development Principles, Coupled with Objective Performance Standards (88).

The Post-Construction Provisions of Both Draft Permits Must Be Revised to Promote and Prioritize LID Techniques (89).

Response: See response to Comment 341 below.

Comment 340. The Current Permitting System Is Unable to Assure Protection of New York's Waters (88).

Response: The current permitting system relies on application of best management practices installed in accordance with standards to prevent erosion and capture sediments. The aspects of these standards that are most effective, need to be enforced. The aspects of the standards that are not as effective as they need to be, must be revised. For example, the design size for sediment basins was 1800 cubic feet per acre. This size was found to be ineffective on some sites in the capture of sediments. In August, 2005, to address this ineffectiveness, the department modified the standard to 3600 cubic feet per acre. The Department considers standards update and correction to be part of the process of environmental protection, not a fatal flaw.

Comment 341. DEC Should Use the Construction General Permit to Encourage the Adoption of Environmental Site Design Principles Which Reduce Runoff During And After Construction and Result in Improved Water Quality Protection(88).

Response: The Department agrees. Better Site Design, Environmental Site Design, and Low Impact Development are cost and environmentally effective management practices. The states technical standards are integrating BSD/ESD/LID concepts into the standards. Those alternatives are found in the two most recent chapters of the NYS stormwater management design manual, the redevelopment and enhanced phosphorus removal standards.

Comment 342. An Objective Standard (numerical effluent limitation) Is Necessary to Provide SWPPP Design Guidance, Evaluate SWPPP Effectiveness, Measure Permit Compliance, and Increase Effective Agency Oversight (88).

Response: Comment noted. The Department views this as an issue worthy of further discussion and has established a process for such discussions. The process is outlined in the public notice of issuance of the final permit.

Comment 343. The Draft Permit Fails to Provide the Public with an Opportunity to Review, Comment upon, and Request a Hearing on Project NOIs and SWPPPs (88).

Response: Comment noted. The Department views this as an issue worthy of further discussion and has established a process for such discussions. The process is outlined in the public notice of issuance of the final permit.

Comment 344. The Clean Water Act and New York Law Require That The Public Be Given An Opportunity to Review and Comment upon Applications for Coverage under the Construction General Permit (88).

Response: Comment noted. The Department views this as an issue worthy of further discussion and has established a process for such discussions. The process is outlined in the public notice of issuance of the final permit.

Comment 345. The Draft Permit Does Not Follow EPA’s Recommendations with Respect to the Minimum Measures Necessary to Comply with the CWA in Light of the EDC Decision (which the Second Circuit followed in Waterkeeper) (88).

The Construction General Permits Must Be Revised to Provide for Public Participation in the Review of NOIs, SWMPs, SWPPPs and Eliminate “Self- Regulation” by Permittees.(89)

Response: Comment noted. The Department views this as an issue worthy of further discussion and has established a process for such discussions. The process is outlined in the public notice of issuance of the final permit.

Comment 346. The Draft Permit Improperly Defers All Substantive Compliance Requirements to the SWPPP Developed by the Permittee Without Adequate Guidance or Regulation by DEC (88).

Response: Comment noted. The Department views this as an issue worthy of further discussion and has established a process for such discussions. The process is outlined in the public notice of issuance of the final permit.

Comment 347. The Permit Should Be Revised to Include Specific Design, Implementation, and Practice Requirements (88).

Response: Comment noted. The Department views this as an issue worthy of further discussion and has established a process for such discussions. The process is outlined in the public notice of issuance of the final permit.

Comment 348. The Steep Slope Restrictions in the Permit, While Welcome, Are Inadequately Protective of New York Waters and Wetlands (88).

Response: The restrictions on the use of the permit for steep slope areas is reserved for those projects where the likelihood of failure of Best Management Practices and the level of protection afforded the receiving water are highest. Where the likelihood of failure is lower, the department’s

technical standards include management practices that can be used as controls on steep slopes. In addition, the Department may determine on a case by case basis that there is a case of steep slope that is not subject to the steep slope exclusion in the general permit, but nonetheless is best regulated by an individual permit.

Comment 349. The Draft Permit’s Technology-Based Effluent Limitation Must Include A Numeric Limit for Turbidity In Order to Provide An Objective Standard for Evaluating Compliance (88).

Numeric Effluent Limits Are Necessary to Ensure Compliance with The Terms of The Permit, New York State, and Federal Regulations.

Numeric Effluent Limits for Construction Stormwater Discharges Are Feasible and Have Been Implemented By Several States.

Compliance with Numeric Effluent Limits Can Be Measured Through Inexpensive Field Sampling of Discharges.

Because Numeric Effluent Limits Are Feasible, DEC Must Incorporate Them into the Draft Permit.

Response: Comment noted. The Department views this as an issue worthy of further discussion and has established a process for such discussions. The process is outlined in the public notice of issuance of the final permit.

Comment 350. The Permit Must Require Monitoring of Actual Discharges In Order To Assure Compliance with It’s Effluent Limitations (88).

Response: Comment noted. The Department views this as an issue worthy of further discussion and has established a process for such discussions. The process is outlined in the public notice of issuance of the final permit.

Comment 351. The General Permit’s Terms Are Inadequate to Assure Compliance with Water Quality Standards or TMDLs (88).

DEC’s Failure to Conduct a Reasonable Potential Analysis for Construction Stormwater Discharges Violates the Clean Water Act.

Industrial Storm Water Discharges Must Comply Strictly With Water Quality Standards.

Water Quality Based Effluent Limitations Must Be Included In the Permit Where Permitted Discharges are Determined to Cause, or Have the Reasonable Potential to Cause Excursions Above Water Quality Standards (88).

Response: Comment noted. The Department views this as an issue worthy of further discussion and has established a process for such discussions. The process is outlined in the public notice of issuance of the final permit.

Comment 352. Where Construction Sites Are Located in Watersheds Identified as Impaired by Construction Related Pollutants, DEC Cannot Issue Coverage Under the General Permit Without First Ensuring that Discharges Will Not Cause or Contribute to Further Violations of Water Quality or TMDL Waste Load Allocations (88).

The Construction General Permit Must Include All Necessary Provisions to Ensure Compliance with WQS, Including Objective Standards, Adequate Monitoring Requirements, and a Compliance Schedule (89).

Issuance of Coverage under the Draft Permit Must Not Contravene New York’s Anti-Degradation Policy.

Response: Comment noted. The Department views this as an issue worthy of further discussion and has established a process for such discussions. The process is outlined in the public notice of issuance of the final permit.

Comment 353. The Draft Permit's Post-construction Controls Likewise Lack Meaningful Goals to Guide Design and Implementation (88).

DEC's Post-construction Permitting Strategy Needs Objective Standards to Guide Compliance and Adequately Protect New York Watersheds.

Response: Comment noted. The Department views this as an issue worthy of further discussion and has established a process for such discussions. The process is outlined in the public notice of issuance of the final permit.

Comment 354. Post-construction Stormwater Discharges Regulated by the Draft Permit Must Comply with TMDL Load Allocations and Water Quality Standards.

Response: Comment noted. The Department views this as an issue worthy of further discussion and has established a process for such discussions. The process is outlined in the public notice of issuance of the final permit.

Comment 355. The Draft General Permits Should Not Cover Construction Activities that Discharge to Waterbodies that are in Violation Applicable WQS; Rather, Such Entities Should be Regulated Under Individual Permits (89).

DEC Regulations Limit the Use of SPDES General Permits Only to Those Construction Activities that Do Not and Will Not Cause or Contribute to WQS Violations (89).

Response: Comment noted. The Department views this as an issue worthy of further discussion and has established a process for such discussions. The process is outlined in the public notice of issuance of the final permit.

Comment 356. CWA Regulations Require Individual Permits for Stormwater Discharges that Cause or Contribute to WQS Violations (89).

Response: Comment noted. The Department views this as an issue worthy of further discussion and has established a process for such discussions. The process is outlined in the public notice of issuance of the final permit.

Comment 357. DEC must require applications for individual permits from construction projects that may cause or contribute to WQS violations (89).

Response: Comment noted. The Department views this as an issue worthy of further discussion and has established a process for such discussions. The process is outlined in the public notice of issuance of the final permit.

Comment 358. The Construction Permit Should Apply the Heightened Phosphorous Requirements to Both the East of Hudson and West of Hudson Portions of the New York City Watershed (89).

Response: The Department does not agree that potential impacts to water quality justify application of the enhanced phosphorus removal standard in the West of Hudson watershed.

Comment 359. DEC Must Prepare Environmental Impact Statements and Demonstrate Consistency With Coastal and Waterfront Policies Before Issuing the Draft Construction

General Permits (89).

Response: The project has been revised from a Type II Action to an Unlisted Action under the State Environmental Quality Review Act. Negative Declarations are on file for SPDES General Permit for Construction GP-0-08-001 and SPDES General Permit for MS4s GP-0-08-002. A coordinated review was not performed in accordance with 6NYCRR Part 617.6(b)(4).