FACT SHEET

For

NEW YORK STATE
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

SPDES GENERAL PERMIT
FOR STORMWATER DISCHARGES

from

MUNICIPAL SEPARATE STORM SEWER SYSTEMS (MS4s)

Permit No. GP-0-10-002

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

and

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

May, 2010

Introduction

The New York State Department of Environmental Conservation (NYSDEC) has prepared the new SPDES General Permit for Stormwater Discharges from Municipal Separate Storm Sewer Systems (MS4s) (GP-0-10-002). GP-0-10-002 is effective on May 1, 2010 and replaces the SPDES General Permit for Stormwater Discharges from Municipal Separate Storm Sewer Systems (MS4s) (GP-0-08-002).

GP-0-10-002 is a five (5) year permit that covers discharges of stormwater to surface waters of the State from small municipal separate storm sewer systems.

In response to significant public interest in the 2008 renewal permits, NYSDEC limited GP-0-08-002 to a two year term, and embarked on an 18 month post-issuance review process. All of the commenters on the 2008 renewal permits were invited to participate in the process. The review process included nine monthly topic meetings on Green Infrastructure, Intermunicipal Cooperation, Stormwater Retrofits, Public Participation, Numeric Effluent Limits, MS4 Funding, Steep Slopes, Riparian Buffers, Total Maximum Daily Loads (TMDLS), and Impaired Waters Issues. Following the 9 topic meetings, working drafts of renewal permits and revised Chapters to the New York State Stormwater Management Design Manual were reviewed with the participants. Three meetings were monthly were held to discuss the revisions to the Chapters to the New York State Stormwater Management Design Manual, the Construction Stormwater Permit, the MS4 permit. Participants were invited to submit comments on the working drafts.

GP-0-10-002 was revised to include provisions identified as beneficial through the 18 month post issuance review process.

NYSDEC also modified the "Designation Criteria for Identifying Regulated Municipal Separate Storm Sewer Systems (MS4s)" as part of this permit renewal process. The specific modifications are discussed below.

Modifications to the Designation Criteria for Identifying Regulated Municipal Separate Storm Sewer Systems (MS4s)

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

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

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

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

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

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

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

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

MS4 General Permit Updates

Permit Coverage – Public Review Process:

Coverage for MS4s authorized under GP-0-08-002 (continuing MS4s) will be automatically continued on an interim basis when GP-0-10-002 is issued.

MS4s not authorized under GP-0-08-002 (newly regulated MS4s) must file an NOI if they are required to gain coverage under GP-0-10-002. MS4s newly authorized under GP-0-10-002, will have 3 years from becoming authorized under the permit to develop their SWMP and commence implementation.

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

http://www.epa.gov/npdes/pubs/hanlonphase2apr14signed.pdf) developed in response to a Ninth Circuit Court decision (EDC v. EPA, 9th Circ. 2003), the location of NOIs, or annual reports for continuing MS4s, will be listed in the Environmental Notice Bulletin with a 28 day period during which comments may be submitted on the NOI. Based on the comments, and other information available, NYSDEC may determine that the MS4 must be authorized under an individual permit.

Single Entity:

Participants in the 18 month review process determined that addressing many of the MS4 permit requirements is better accomplished on a larger scale (e.g. County or Watershed). This concept is supported by the conclusions of the 2008 National Research Council's report entitled Urban Stormwater Management in the United States. Although GP-0-08-002 contained substantial provisions that allow for sharing responsibilities between many MS4s, the participants in the 18 month review process advised that the opportunity for a single entity to be authorized will further encourage larger scale coordinated implementation. Toward that end, GP-0-10-002 includes a provision for a single entity to be the covered entity for many MS4s.

Impaired Waters:

GP-0-10-002 includes a provision clarifying what is meant by negligible changes; changes to land use of less than one acre of impervious cover.

During the 18 month review process, participants asked that NYSDEC's approach to determining compliance determinations for MS4s collaborating to satisfy load reduction requirements. To answer this request, the GP-0-10-002 allows for "bubble" compliance with load reductions to a watershed, whereby MS4s may be credited for reductions without being restricted to areas within municipal boundaries.

Additions and Clarifications to Specific MCMs:

- **MCM 2 – Public Involvement/Participation:**
  GP-0-01-002 includes a clarification allowing the public to participate in development and implementation of SWMPs.

- **MCM 4 – Construction Site Stormwater Runoff Control:**
  Several MS4 participants to the 18 month review process reported confusion created as to when NYSDEC allows for a construction project to be terminated from coverage under construction permit requirements. Those participants asked that, prior to sites being terminated under the construction stormwater permit, regulated MS4s be allowed to sign off on the projects. The construction permit includes such a requirement and a coordinated requirement for MS4s to accept notices of termination in included in the

MS4 permit.

- **MCM 5 – Post Construction Stormwater Management:**
  Participants to the 18 month review process, as well as the conclusions of the 2008 National Research Council's report entitled Urban Stormwater Management in the United States, made clear that reduction of stormwater runoff is a key to successful stormwater program implementation. A great deal of runoff reduction can be achieved by implementation of Green Infrastructure practices. To facilitate implementation of Green Infrastructure practices, GP-0-10-002 includes requirements for:

  - Training municipal officials in Green Infrastructure Practices

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

  Several participants also expressed concerns about meeting the no net increase requirements for impaired waters. To provide a tool that allows for meeting the no net increase, as well as achieving some reductions, GP-0-10-002 includes a provision for a Banking and Credit system that would allow for offsets from construction projects. Among other criteria for offsets, the offsets would be required to provide twice the pollutant reduction of standard practices.

- **MCM 6 – Pollution Prevention and Good Housekeeping:**
  In addition to the requirements included in MCM 5 for runoff reduction, the MCM 6 includes a requirement the MS4 to incorporate runoff reduction into routine upgrades to stormwater conveyance systems and municipal properties.

Watershed Improvement Strategies:

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

- **Numeric Pollutant Reductions**
  One of the issues raised by participants in the post issuance review process was the need to set numeric reductions in the permit for TMDL or reasonable potential areas. Toward that end, GP-0-10-002 includes tabular reduction criteria by waterbody for each Watershed Improvement Strategy.

- **On-site Systems Requirements**
  Under requirements for on-site systems, GP-08-002 included provisions for on-site

system inspection, maintenance and rehabilitation on a three year schedule. In the early implementation of this requirement in the East of Hudson Watershed, it appeared that the three year schedule would exceed the capacity of local on-site septic service providers. Through the same process, it was determined that the requirements should be clarified to make clear that the on-site requirements apply to the whole system, including the absorption area, not just the tanks. GP-0-10-002 includes revised language related to on-site systems to clarify, as well as to change the three year schedule to a five year schedule to make the requirement align with local service provider capacity.

- **Long Island On-site Systems**
  GP-0-10-002 modifies the requirements for on-site systems on Long Island to target on-site systems within effected storm sewersheds for inspection, maintenance and rehabilitation, rather than requirements for inspection, maintenance and rehabilitation for all septic systems within the effected storm sewersheds.

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

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

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

SWPPP Review and Acceptance Process for Regulated Construction Activities

The New York State Stormwater Technical standards are presented in the New York Standards and Specifications for Erosion and Sediment Control (for during construction) and the New York State Stormwater Management Design Manual (for post-construction) (collectively "technical standards"). The Design Manual defines two sets of criteria: "Sizing Criteria" (e.g. WQv, RRv, CPv, etc…included in Chapter 4) and "Performance Criteria" (reduction level, design specifications, required elements, design guidance, etc…included in Chapters 5 and 6).

Performance criteria are defined by the Design Manual into two parts; Design Guidelines and Required Elements. Design Guidelines are features that enhance practice performance, but may not be necessary for all site specific applications. Required Elements are features that should be used in all design applications.

If review of the NOI indicates that the SWPPP has not been developed according to the technical standards and the project has not been reviewed by a regulated traditional land use control MS4, the applicant will be required to submit a full SWPPP to NYSDEC. Through its review of the NOI, NYSDEC confirms that each owner or operator seeking coverage under the construction stormwater general permit has complied with the technical standards. For projects not in a regulated MS4 area, that don't meet the technical standards, the NYSDEC requires a minimum 60 days processing time to review the SWPPP to determine if all design considerations, sizing criteria and performance criteria, have been met. During this time period, NYSDEC also determines the significance of the deviations from the technical standards.

With respect to post-construction stormwater controls, in order to be in compliance with the technical standards (Design Manual), projects must meet both sets of criteria; performance and sizing. In general, NYSDEC will only accept deviations from the technical standards that involve the use of an alternative post-construction stormwater management practice or a modification to one of the standard practices from the Design Manual, provided the owner has demonstrated that the deviation is equivalent to the Design Manual. The alternative post-construction stormwater management practices that are accepted are those that meet Performance Criteria, as verified by sources identified by the Department and appear on NYSDEC's website. Modification to the standard practices are only acceptable if the proposed modification meet the Required Elements of the Design Manual and does not result in neglecting the principles of the design and performance criteria. Additionally, all designs must comply with the Sizing Criteria and be verified in the NOI review process, regardless of their status with Performance Criteria.

For projects located in the regulated MS4 areas, traditional land use control MS4s review the SWPPP to determine if all design considerations have been met. The MS4 is required to follow the same principles in the review of the SWPPP to ensure the equivalency of the design specification to the erosion and sediment control practices and performance criteria and the sizing criteria of post construction practices.