



Alexander B. Grannis
Commissioner

**Responsiveness Summary
for
Public Comments Received
on the**

NEW YORK STATE
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

SPDES GENERAL PERMIT
FOR STORMWATER DISCHARGES

from

**MUNICIPAL SEPARATE STORM SEWER SYSTEMS
(MS4s)**

Permit No. GP-0-08-002

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

April, 2008

**Response to Comments on Draft SPDES General Permit
for Stormwater Discharges from Municipal Separate Storm Sewer Systems (MS4s)
GP-0-08-002
April, 2008**

The draft General Permit was made available for public review on October 10, 2007 for a period of 60 days ending on December 10, 2007. 72 persons or groups submitted comments on the draft permit. Comments are grouped and summarized first by general categories, then by the place in the draft permit to which they pertain. Each comment includes a number in parenthesis that has been assigned to the primary source or sources of the comment. The list of commenters and assigned numbers is included as Appendix A.

General Comments

Comment 1. The Village of East Hampton is not in the Peconic Estuary watershed. Why are they being regulated. Please clarify. Request a 180 d extension for filing NOI, because of short notice (53).

Response. The Village of East Hampton was included in error and has been removed from the list of MS4s that are additionally designated by Criteria 1 due to the approval of a Pathogen TMDL for embayments in the Peconic Estuary. Please be advised that the Village of East Hampton will still be designated by Criteria 1 because of EPA approval of another TMDL.

Comment 2. The Draft MS4 Permit Fails to Provide (1) a Meaningful Opportunity for Public Review and Comment upon SWMPs. (2) an Opportunity for Public Hearing on SWMPs; and (3) for DEC Review and Approval of SWMPs Prior to Permit Coverage Being Granted. (71) The Draft MS4 Permit Must Be Revised to Provide for Public Participation in the Review of NOIs, SWMPs, SWPPPs and Eliminate “Self-Regulation” by Permittees. CWA Regulations Require Individual Permits for Stormwater Discharges that Cause or Contribute to WQS Violations. DEC must subject small MS4s that cause or contribute to WQS violations to the same individual permitting requirements applicable to “Phase I” permits for medium and large MS4s. (72)

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 3. The Draft MS4 Permit Must Include Measures to Ensure Compliance with Water Quality Standards and TMDLs. DEC Is Authorized and Required to Include Water-Quality Based Limitations in the MS4 Permit As Necessary to Meet Water Quality Standards. The Draft MS4 Permit Should Include a TMDL Compliance Plan. The General Permit’s Overall Regulatory Approach Is Inadequate to Assure Compliance with Water Quality Standards or TMDLs (71).

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 4. DEC’s Failure to Conduct a Reasonable Potential Analysis Violates the Clean Water Act. Reasonable Potential and Numeric Criteria, Determining Reasonable Potential With Effluent Monitoring Data (71).

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 5. Municipal Stormwater 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 (71).

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 6. Where MS4s Discharge to Waters Identified as Impaired by Pollutants Present in Municipal Stormwater, 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. (71) I. The Draft General Permit Should Not Cover MS4s that Discharge to Waterbodies that are in Violation Applicable WQS; Rather, Such Entities Should be Regulated Under Individual Permits. (72)

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. Nonetheless,

Comment 7. Including MS4s that Discharge to Impaired and High Quality Waters in the Same General Permit with those that Discharge to All other Waters Contravenes Federal and State General Permit Regulations (71).

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 8. Issuance of Coverage under the Draft MS4 Permit Must Not Contravene New York's Anti-degradation Policy(71)(72).

Response. The permit implements the anti-degradation policy by including water quality based BMP requirements. Under the anti-degradation policy, variations in numerical water quality criteria that are not significant and do not interfere with attained higher uses are permitted.

Comment 9. The Draft MS4 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) (71).

Response. See response comment 2.

Comment 10. In Order to Satisfy the Clean Water Act's Maximum Extent Practicable (MEP) Standard, DEC Must Provide More Specific Guidance to Regulated MS4s.

a. The Draft MS4 Permit Fails to Achieve Pollutant Reductions to the "Maximum Extent Practicable." b. In Order to Assure the Implementation of MEP, The Permit Should Be Revised to Include Specific Design, Implementation, and Practice Requirements (71).

Response. The permit includes a definition of MEP. The department has also provided specific guidance and technical standards appropriate to regulated small MS4s, as well as relying on EPA guidance on MS4 implementation. In particular, compliance with the New York State Standards for Erosion and Sediment Control and the New York State Stormwater Management Design Manual are key requirements of both the construction stormwater permit and the MS4 permit. Requirements applied to large (phase I) MS4s, where the population density is higher, do not necessarily translate to a viable small MS4 requirement where population densities are lower.

Comment 11. DEC's Approach to Authorized Non-Stormwater Discharges Is Problematic by authorizing non-stormwater discharges typical of those from residences (71).

Response. The department believes that the preponderance of household contributions to MS4s should be exempt from the requirement to obtain a SPDES permit. Requiring permitting for the listed non-stormwater discharges would shift the focus of scarce local resources to lower priority areas, just the opposite of what is needed to most effectively protect water quality. To clarify the requirement, the final permit has been modified to exempt such discharges from the requirement to obtain a SPDES permit, rather than authorize the discharges.

Comment 12. The Public Education Measures Should Be Substantively Improved (71).

Response. The department disagrees. Public education requirements of the permit are in accordance with established NYSDEC and USEPA guidance.

Comment 13. Construction Site Stormwater Runoff Control and SWMP Development / Implementation Deficiencies; the MS4 permit should include a numeric effluent limit for turbidity from construction sites of 50 NTUs (71).

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 14. Retrofit Programs should require more objective standards and measurable goals like a specific number of retrofits completed per unit time (71).

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 15. The Permit Should Do More to Require and Encourage Smart Growth, Better Site Design, and Low Impact Development (LID) to Reduce Municipal Stormwater Pollution. (71)(72)

Response. The department agrees that such design strategies should be encouraged. Better Site Design, Environmental Site Design, Green Infrastructure and Low Impact Development are cost and environmentally effective management practices. The state's 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.

The final permit includes additional language to further encourage smart growth and low impact development.

Comment 16. The Draft MS4 Permit Should Set Forth Clear Expectations for Stormwater Management [Program] Plan Revisions. (71)

Response. The permit has been revised to clarify expectations for SWMP plan revisions. SWMPs must be revised when it is found that they do not reduce pollutants to the Maximum Extent Practicable or that they do not adequately protect water quality. SWMP plans must, in

any case, meet the minimum requirement of the MS4 permit.

Comment 17. DEC Should Require Small MS4s Within a Single Watershed and Small MS4s adjacent to large or medium MS4s covered by existing Phase I permits to Apply as Co-Applicants. (72)

Response. The department supports cooperation and collaboration between MS4s both within watersheds and within incorporated municipalities. Such cooperation and collaboration provides the best opportunity to reduce pollutant to MEP and meet water quality criteria. Co-applicants/co-permittees are not the only alternative to accomplish such cooperation and collaboration. The department considers inter-municipal agreements between authorized permittees to be the most expeditious path to cooperation and collaboration at this time.

Comment 18. The Draft MS4 General Permit Must Ensure Appropriate Inter-Agency Coordination on Stormwater Management *Within* Each Covered Municipality. (72)

Response. The permit has been modified to clarify that MS4s are responsible for ensuring intra-agency cooperation.

Comment 19. The Draft MS4 and Construction General Permits Must Include All Necessary Provisions to Ensure Compliance with WQS, Including Objective Standards, Adequate Monitoring Requirements, and a Compliance Schedule. (72)

Response. The permit has been modified to include specific compliance schedule requirements.

Comment 20. The Permit Must Ensure Qualified Individuals With Adequate Training and Expertise Are Responsible for Development and Implementation of SWMPs. (72)

Response. Both the construction and MS4 permits include training and qualification requirements (e.g. qualified professional). Nonetheless, both final permits include some clarification of that qualification requirement.

Comment 21. The MS4 and Construction Permits Should Apply the Heightened Phosphorous Requirements to Both the East of Hudson and West of Hudson Portions of the New York City Watershed. (72)

Response. The watershed improvement strategy requirement for the NYC Watershed East of the Hudson will protect of the New York City water supply.

Comment 22. DEC Must Prepare Environmental Impact Statements and Demonstrate Consistency With Coastal and Waterfront Policies Before Issuing the Draft MS4 and Construction General Permits (72).

Response. The project description 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-0-01-001 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).

Permit Development and Issuance

Comment 23. Local MS4s (Onondaga Co) feel that municipal governments were not involved with the issue of stormwater treatment and the creation of the program. The program should be rethought instead of issuing the revised permit in its current form. (17, 22, 25, 34)

Response. The existing TMDL calls for a significant reduction in non-point source loadings and, in the Onondaga TMDL, stormwater loadings are lumped in and a large part of the non-point source loadings. Because that TMDL is currently under review, the schedule for the Onondaga Lake Watershed Improvement Strategy has been revised to allow for more input from municipal governments during review of the TMDL. It is likely, however, that there will be a waste load allocation for stormwater that will be less than current stormwater loads, requiring a reduction in phosphorus loading from MS4s.

Comment 24. The permits, all their requirements and all the references they refer to are too long to evaluate the full impact this program will have on communities. Request another year to fully evaluate the additional requirements detailed in the draft permit. (10, 16, 25)

Response. Additional time has been provided for MS4s to comply with permit requirements. In particular, deadlines for specific requirements in watershed improvement strategies have been extended, existing permittees have been allowed until March 9, 2009 (or at the time of an MS4 audit) to assemble stormwater management program plans, preliminary storm sewer watershed delineations are not required until March 9, 2010, requirements for SWPPP acceptance letter requirements do not start until September 30, 2008, an inventory of post construction stormwater practices is not required until May 1, 2009 and self-assessments of municipal operations are to be scheduled on a 3 year cycle.

Comment 25. The comment period should be extended to allow the MS4s to look for alternative funding options and opportunities for city, state, and federal technical support options for the MS4s. (8, 53)

Response. Additional extensions beyond the five years that have been allowed for program development are not warranted. Five years has been allowed to develop programs, including to determinations of financial needs. During that time, grant monies have also been made available to work on program development, implementation and creation of more long-term funding mechanisms to sustain programs.

Permit Coverage

Comment 26. Do public benefit corporations need MS4 permit coverage. Such corporations are often charged with constructing an improvement that is then turned over to the state or municipal agency. Typically the projects need post-construction. What kind of stormwater permitted is required and who's the owner/operator for these corporations? We need more explanation on these.(67)

Response. Public benefit corporations are required to gain coverage if projects they work on are in an urbanized area. The stormwater management program they develop should be applicable to all possible sites they could work on. The public benefit corporations are classified as non-

traditional MS4s. The owner /operator is the responsible official for the benefit corporation.

When the property/facility is turned over to the a state or municipal agency, that agency then becomes the owner/operator.

If the project is in an area where the municipal agency has been granted a waiver from MS4 permit coverage, the need for coverage will be determined on an individual basis.

Comment 27. Instead of spending the resources to renew the permit, the State should work with the EPA to define “Permittee” based on quantity or quality of stormwater runoff from their system, potential water quality impairments, existing development density or rate of development. (37)

Response. The DEC has chosen to comply with the terms of its agreement with EPA to protect environmental quality in urbanized and additionally designated areas of the state as set forth in EPA stormwater rules.

Comment 28. Due to the requirements and cost of the state permit, is it reasonable to think that MS4s could get coverage under an individual federal permit? (37)

Response. In discussions with EPA, EPA has stated that DEC is approved as the NPDES permitting authority in New York State. For EPA to permit discharges in New York State, the EPA would have to withdraw New York’s NPDES approval.

Permit Content

Comment 29. Provide clarification “such as”, does it mean “for example” (flexible) or “that is” (restrictive)? (2)

Response. “such as” is used to mean “for example”.

Comment 30. Provide a rationale for why some of these procedures and polices are required. That may help permittees figure out how to comply, if they can’t directly comply with the requirement, e.g. for the leaf bagging/container program, so in their attempts to comply their actions they don’t end up having deleterious effects on water quality. (49)

Response. The leaf bagging/container program was included because up to 50% of the phosphorus load from developed areas has been attributed to leafs that decay adjacent to stormwater conveyance systems (Watershed Protection Techniques, Urban Lake Management, Vo.3, No.4 - December 2001). Loading of phosphorus, fecal coliform, and nitrogen is attributable to on-site treatment systems, although the portion of loads differ depending upon the land use mix and the pollutant.

Comment 31. The old permit was more flexible with the 6 MCMs; in the new permit, the descriptions for each MCM are more restrictive, with very specific BMPs on how, where and to what extent the permittee is expected to accomplish the MCMs. The new permit selects the performance criteria they want the MS4s to report on, which is more difficult and not tailored by the MS4 to meet their program. The old permit allowed the MS4s to select their own. (36)

Response. Additional descriptions were included in the draft permit to clarify what must be completed to comply with the permit requirements. Likewise, the selected performance criteria is the minimum that is intended to be a reasonable indicator of program performance. In light of this and other comments contained herein, some of those performance indicators (e.g. yards of materials removed, gallons of oil recycled, gallons of antifreeze recycled) have been removed from the final permit.

Comment 32. Too much responsibility is being passed on to the MS4s. (Many Commentors)

Response. In light of comments contained herein, requirements that were included for all permittees, as well as some of the requirements proposed for watershed improvement strategies have been reduced or the time frames extended to relieve some of the burdens on MS4s. In any case, there is a minimum level of control that must be maintained by MS4s to meet the requirements of the EPA program. In areas not subject to watershed improvement strategies, the final permits are similar in the level of requirements to the EPA program and the MS4 permits of other states.

Comment 33. This draft permit is excessively complex, resulting in regulatory and reporting requirements that will be costly and difficult for many permittees, particularly the small, rural municipalities on the fringes of urbanized areas. (13, 26, 28, 37)

Response. Many of the requirements in the draft permit were also required by GP-02-02, albeit not explicitly. The reporting requirements are intended to provide for permittees to document their work for SWMP assessment and the determination of MEP. The department also believes that the smaller municipalities on the fringes of urbanized areas would greatly benefit from working under an inter-municipal agreement with adjacent MS4s.

Comment 34. This program exceeds the EPA requirements and contains more specific activities and requirements (which used to be “recommendations”) than the Federal requirements. (26, 37)

Response. In the course of development of SWMPs, the Department identified program components that, although they are not explicitly required by EPA’s model permit, were essential to effective program implementation. Those components were added into guidance so permittees would begin to develop their program to include those components. The essential components are new requirements of the final permit.

Comment 35. These requirements should be reduced or eliminated for rural townships with no storm sewers or concentrated development. (34, 37)

Response. The waiver process is available for permittees. For those permittees that do not qualify for a waiver, the relative commitment to their programs should reflect the potential contributions of pollutant discharges from the MS4 to waters of the State and the size of the urbanized or additionally designated area for which they are responsible. In addition, those permittees are encouraged to seek a cooperative agreement with adjacent MS4s for program delivery.

Environmental Protection

Comment 36. The DEC has failed to meet the intent of the Phase II Stormwater regulation,

and anti-degradation parts of State and Federal Laws under the past permit and they are setting themselves up to do it again. They have failed to educate, guide, prod, etc the MS4s into the reality of what they will be required to do and this new permit will be a shock because they thought the prior permit was a paper tiger (due to poor communication and lack of enforcement). (23)

Response. The department compliance strategy for MS4s includes monitoring, determination of significant non-compliance (SNC), timely and appropriate response and documentation of issues resolved. The primary methods of monitoring include annual reports and MS4 audits. Response to significant non-compliance includes informal enforcement (Audit Report Forms/Letters and Notices of Violation) and formal enforcement (executed consent order, notice of hearing and complaint, and referral to attorney general). In the early phases of MS4 stormwater implementation, formal enforcement has largely focused on failure to submit annual reports. With the deadline for full implementation (January 8, 2008), that focus is expanded to include other types of SNC, such as failure to develop and implement SWMPs.

Comment 37. The permit should emphasize water quality more. The old permit says the permit's goal is to "reduce the discharge of pollutants". It's been revised to read "control...stormwater discharges". (7, 20)

Response. The Watershed Improvement Strategy language in the final permit has been modified to be similar to the TMDL Strategy language in GP-02-02 by addition of 'so that the waste load allocation is met.'

Comment 38. The DEC should 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. (65)

Response. New York State is also concerned about the cost of this unfunded federal mandate and has awarded over eleven million dollars in grants to assist MS4s with development and implementation of SWMPs. As the Department was developing the New York State permits, staff considered projections of funding needed for MS4s and others to implement the program.

EPA has estimated that MS4s might expect to spend between \$3 and \$60 per capita (**this cost estimate is from 2002**) to implement stormwater programs in their jurisdiction. The lesser figure represents a program that meets the minimum program requirements whereas the upper cost figure is for an extensive program, with many optional components that a community might find beneficial and desirable. So for example, a community with a population of 30,000 might spend anywhere from \$100,000 to, at the outside, \$2,000,000 annually on their programs.

Mitigating the impacts of stormwater pollution through effective implementation of this program is expected to generate economic benefits to the state by improved shellfishing, swimming, boating, and general water quality as well as reduced impacts from flooding. Based on the EPA analysis, benefits of the Phase II stormwater program nationwide are anticipated to be greater than the costs of its implementation. The Department expects this will also be the case in New York State.

For Water Quality Based Effluent Limitations in the permit, cost considerations are part of the

TMDL analysis, including revisions that incorporate Use Attainability Analysis.

Comment 39. Additional cost of program in UA's will drive development outside of them, promoting sprawl. Redevelopment within UA's will decrease and have a deleterious economic impact. (21, 30, 41)

Response. The department could find no information to support this assertion. It may be worthy of further study with consideration being given to the magnitude of increased costs, the tendency toward cost avoidance (e.g. would the incremental costs justify relocation) and the value of improved or protected water resources. However, such a study is beyond the scope of this response.

To qualitatively address this concern, the department has published standards for redevelopment (Chapter 9 of the New York State Stormwater Management Design Manual) that take into consideration the challenges associated with redevelopment as well as the opportunities for pollutant reductions that redevelopment sites offer.

Comment 40. There should be requirements to address thermal discharges to trout streams. There should be some sort of temperature monitoring. (39)

Response. It is not the intent of this permit to require routine monitoring of water discharged from MS4s, except when identifying or tracking down illicit discharges.

Training

Comment 41. The resources to have adequately trained SWPPP review staff and get approvals for SWPPP acceptance form are more than the MS4s have. (9, 10, 15, 16, 25, 26, 38, 41)

Response. One of GP-02-02's requirements was for permittees to develop procedures for SWPPP review and provide adequate resources to implement their SWMP, with a deadline of January 8, 2008. One of the alternatives for permittees set forth in the NYSDEC Model Law, is for construction site owners to pay for the cost of reviewing Stormwater Pollution Prevention Plans by a third party reviewer. In addition, permittees are encouraged to form regional stormwater entities (inter-municipal agreements, drainage districts, and public benefit corporations) to most efficiently manage the burdens of Stormwater Management Program implementation. Finally, there are partnership organizations (e.g. Soil and Water Conservation Districts, Regional Planning Boards, Some County agencies and Cornell Cooperative Extension) that are working with MS4 coalitions to effectively coordinate program implementation on a region level, thereby minimize the overall resource commitment.

Comment 42. There are a lot of training and enforcement requirements in the permit. Will the State provide no or low-cost training opportunities or training materials to be utilized by MS4s and contractors? Will there be a list of DEC sponsored or approved training courses available to the MS4s? Will there be training provided for enforcement officers specific to the permit requirements? (10, 25, 26)

Response. Training has been provided through SUNY ESF, Soil and Water Conservation Districts, Cornell Cooperative Extension, the DEC and other agencies. The availability of future

training is likely dependent upon need and funding. Individuals interested in training opportunities should consult the website at this link (<http://www.dec.ny.gov/chemical/8699.html>).

In 2007, the NYSDEC or its partners provided stormwater training to at least, 3,445 consulting engineers, code enforcement officers, town engineers, municipal officials, planners, developers, contractors, landscape architects, resource management specialists, and others. SUNY-ESF taught 8 professional stormwater courses at eleven 2-day venues training 445. There were another 60 plus training venues - reaching over 3,000 trainees - sponsored by county soil and water conservation districts, stormwater coalitions, and county/regional planning boards. Training was also conducted by statewide associations representing building officials, floodplain management, watershed and related interest groups. Most training was targeted to group sizes of 25 or 50 but 3 events were in the 75 to 200 range and 4 reached audiences greater than 200. Code enforcement officers and local municipal compliance officers were targeted for training on how to conduct erosion and sediment control inspections at 36% of the events and received continuing education credits at most of these venues. MS4s were trained on general MS4 and construction permit requirements at another 34%. In addition, other specific training was given, e.g., to contractors on sediment and erosion control, and to municipal audiences on better site design, and pollution prevention and good housekeeping.

Funding Concerns

Comment 43. The program is demanding, lots of man hours. Will there be funding provided? (5, 9, 16, 28, 49, 51, 57)

Response. See response to comment 41.

Comment 44. Concern about program requirements on staff, municipal policies, administrative costs and budget issues. The additional tax burden on properties outside of the urbanized area if taxes need to be raised to do the MS4 program, or burden from program in general (to run the models, hire additional staff to effectively implement the program, etc.). The tax burden from the overall on smaller, less populated areas will also be a problem. (8, 9, 16, 22, 23, 24, 25, 26, 33, 34, 38, 41, 49, 57)

Response. Funding has been made available through grants for much of the work required to develop a SWMP and examine the creation of a long-term funding mechanism. The availability of any additional grant funding is unknown at this time. One of the requirements of GP-02-02 was to provide adequate resources to fully implement their SWMP by January 8, 2008. Permittees have been allowed 5 years to develop their programs, including providing the needed resources.

Comment 45. The State needs to get enabling legislation for utility districts. (9, 10)

Response. Comment noted. Enabling legislation for utility districts is beyond the scope of the MS4 permit drafting process.

Funding Concerns Related to Specific Program Areas

Comment 46. The new permits require changes to the newly adopted laws. Communities have already spent a lot of money to get the laws adopted. (25)

Response. Except for permittees in watersheds with improvement strategies, permittees are not required to make changes to adopted laws that are equivalent to the DEC model law that was available at the time their law or laws were adopted. Permittees may wish, but are not required to at this time to, review their local laws to determine consistency with some of the modified administrative requirements of the construction stormwater permit.

Comment 47. The costs of the post construction EOH retrofit program will be so great the state should not require it unless there is commitment by federal, state and city agencies to commit funding for the program. (24)

Response. The permits do not establish the funding mechanisms for such programs. However, grants have historically been available to complete these types of retrofits. The department also expects that there will be shared responsibilities for completing retrofits through some form of a regional stormwater entity.

Regional Approach

Comment 48. The State needs to create a “model” for communities working together to manage stormwater issues, because stormwater is best managed at the boundaries of a watershed, not municipal, watershed approach is more cost effective, and the traditional MS4s and non-traditional MS4s don’t have the same regulatory authorities; try a regional approach because more cost effective and would get more consistent programs / scrutiny. Locals are not trained as well to do work on an individual basis. MS4 boundaries should be at watershed, not census boundaries. (10, 12, 17, 22, 23, 28, 30, 34, 59, 64)

Response. An example Inter-municipal Agreement and Municipal resolution are attached to the response to comments as Appendix B.

There are also numerous opportunities to form partnerships with other agencies such as County Soil and Water Conservation Districts, Regional Planning Boards, Cornell Cooperative Extension, Watershed Groups and Non-point Source Education for Municipal Officials. An example agreement with a Soil and Water Conservation District is included as Appendix C.

Comment 49. Since NYC receives the benefit of work in EOH, they should be included in the partnership or provide funding and technical support to the MS4s. (9, 10, 24)

Response. NYCDEP has a number of very capable staff as well as institutional capabilities that the department has every expectation will play a positive role in effecting improvements to the watershed.

SWMP Development and Implementation

Comment 50. The state should postpone implementation until they have had time to fully understand the statewide feedback. (59)

Response. Department staff have taken additional time for the review and consideration of the comments received.

Comment 51. The implementation process of this permit in conjunction with the

construction program is too burdensome and complicated for small MS4s; and many MS4s won't be capable of implementing the program at the beginning. (37, 38)

Response. The Department understands that implementation will be a challenge for many permittees. The 5 years that were allowed for development of SWMPs to be fully implemented by January 8, 2008, was ample time for program development. Nonetheless, realizing that many permittees are not yet capable of fully implementing their programs, for some requirements, the final permit allows additional time for permittees time to comply.

Comment 52. Delay required implementation one year because communities already have their budgets in place for 2008 and they were not able to allocate funding for this program because they were unaware of the increased requirements. This is especially important in the TMDL watersheds. Because TMDL Ms4s will need to do technical analyses, do request for bids, and go through the bidding process prior to completing the study to determine locations for site-specific retrofits, 3 years should be provided for individual MS4s and 5 years for those working together. (9, 10, 14 16, 24, 28, 33, 49, 53)

Response. The deadlines for submission of retrofit schedules have been extended in each of the watersheds. The length of extensions granted was based on the extent of the watershed degradation, the intended uses of the waters, the level of existing watershed planning, funding opportunities and support structures in place.

Comment 53. The old permit allowed the permittees to develop their BMPs that they need to comply with by January 8, 2008. At that point in time the permit is enforceable, based on the permittees BMPs for their MCMs. The new permit contains BMPS not selected and developed by the permittees, but the permittee appears to be bound by the terms and conditions of the permit. Do the requirements of this new permit become enforceable on Jan 8, 2008 or is there a schedule by which the MS4s need to meet the requirements. (36)

Response. See response to comment 24 and 51.

Comment 54. Does the Department plan to implement the permits on a compliance schedule or offer grace periods in order for permittees to comply with requirements where the needed resources, courses, etc aren't available? (2) Will the Department provide a schedule for continuing permittees to integrate any new MCM requirements into their SWMP. (2)

Response. See response to comment 24 and 51.

Program Notification

Comment 55. Can the department send information to the Owner / Operator or Permittee about any changes / updates to the program via e-mail. (2)

Response. The Department has sent update information to the e-mail addresses submitted as part of the annual report and intends to continue this practice as one means of providing permittees with up-to-date information, as well as exploring other practices.

Permit Structure / Setup

Comment 56. Could we only italicize words the first time a defined word appears and highlight it the other times. (6)

Response. Comment noted. The department considers the formatting contained in the draft permit to be appropriate.

Comment 57. Consider consolidating required reporting, maybe to an appendix.(7)

Response. Comment noted. The department left the reporting requirements in the appropriate section.

Comment 58. Make all of the requirements clear and concise (33)

Response. Comment noted. Requirements have been clarified and consolidated to the extent practicable.

Annual Reporting

Comment 59. Can the blank annual report be made available on the web site? The FTP site was difficult to access. (2)

Response. Department staff will continue to explore ways to make the blank report form more readily available.

Comment 60. Keep the annual report format the same over the 5 years. (33)

Response. Comment noted. The report for 2007-2008 will be largely the same. However, future year reports will focus more on submission of implementation information than development information.

Comment 61. Does the department not intend to make the provisions of the new permit enforceable until 2009 because a new annual reporting format that will reflect permit changes won't be complete until year 2 of the new permit? (36)

Response. New reporting information will be due starting in 2009.

Comment 62. Annual Report process is too burdensome. (37)

Response. The Annual Report for the development period was set up to be completed electronically (using word processing software) and modified from one year to the next. Permittees that completed the Annual Report in an electronic format should have been able to use previous years' reports to include up-to-date program information instead of completing a new report from scratch. Annual reports for MS4s fully implementing their programs should require even fewer changes from year to year, with the bulk of the reporting focusing on quantitative measures (e.g. number of construction projects reviewed).

PREFACE

Comment 63. Third line, first paragraph - "Stateare" fix to State are. (24)

Response. The suggested correction has been included in the final permit.

Comment 64. “...authorized to discharge stormwater from their small MS4...” The definition of stormwater is similar to the textbook definition of Horton’s overland flow. Using this definition, an MS4 would not be authorized to convey any overland flow, which may not be the intent of the permit. Rather, its intent is to reduce stormwater pollutants. DEC should revise the definition of stormwater or discharge accordingly. (48)

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

Part I. PERMIT COVERAGE AND LIMITATIONS

^A.2. Permit Application.

Comment 65. There should be a statement that these non-stormwater discharges are not authorized by the general permit where they have the potential to impact or contribute to the degradation of a stream channel. (24)

Response. This scenario is already covered by the existing language.

Comment 66. Add to the list “road drains of highway groundwater dewatering conveyances” (24)

Response: In the final permit, ‘pumped’ has been deleted from the exempt discharge of ‘uncontaminated pumped groundwater’.

Comment 67. Page 66 - defines “discharge” as “the addition of any pollutant to water of the US through an outlet or point source”. Thus, it could be concluded that this part permits polluted water contained in the sources listed. It seems apparent that this is not the intent of this section, but the intent instead to permit water sources that are not substantial contributors of pollutants. The term “discharge” should be used consistently. Given the definition of “discharge” currently in the permit, it is suggested that another term be used that means the “physical release of water” or change the current definition of “discharge”. (48)

Response. The definition of discharge in the Code of Federal Regulations, in 40 CFR 122.2 is: “Discharge when used without qualification means the “discharge of a pollutant.”“

Because there are no requirements in the permit for no discharge of pollutants, it is assumed that there will be at least a small amount of pollutants in any storm water discharged from an MS4. No change was made to the permit.

Comment 68. Basement sump pumps. The potential for intentional or inadvertent discharge of petroleum products or chemicals from basement sump pumps is too great for this to be permitted. Permits for these discharges should be issued by the MS4s, which would enable the MS4s to track the location and put the homeowners on notice so that they exercise greater care in the chemicals that are released in their basements. (24)

Response. At a minimum, homeowners should become knowledgeable about proper disposal of chemicals through the IDDE public education program.

Comment 69. education is “recommended”. On pg 23, VII.A.1.b.(iv) is it required. (42)

Response: “recommended” has been changed to required.

B. Maintaining Water Quality

Comment 70. Change to read “...the *Department* will notify...and shall take enforcement actions...” and “The *permittee* must take all necessary actions to ensure current and future...”. Enforcement should be mandatory because a violation was detected. (23)

Response. The description of the department’s possible actions in the permit is intended to be information for persons reading the permit, not to dictate or limit department compliance activities.

C. Limitations on Coverage

D. Exemption Criteria

Comment 71. insert the term “discharges” between “stormwater” and “associated with industrial activity” may help clarify the applicability of this section, particularly with respect to language in the subsequent phrase “...if the discharges are:...” (52)

Response. This wording was carried over from GP-02-02 and is correct as is.

Comment 72. There are exemptions for discharges combined with industrial stormwater if covered under a general or individual permit. Why is there no similar exemption for MS4 storm water discharges mixed with discharges from construction activity with individual or general permit coverage. To not provide both exemptions is not logical. Provide rationale if don’t add in additional exemption. (52)

Response. For the short term construction stormwater discharges, the department intends to track and oversee activities through the construction NOI process. Whereas for some of the longer term industrial stormwater discharges, the MS4 process is appropriate.

Comment 73. Are these exemptions exclusively for NYS designated MS4s? How will the discharge be handled in a situation of mixing where the MS4 is exempt from the general SPDES permit. Add language to ensure that the exemptions in Part I.D pertain to non-federal MS4s. (62 EPA)

Response. This exemption applies to all designated Phase II MS4s (permittees designated by Federal or State criteria). If there is a situation where mixing occurs between industrial stormwater and MS4 discharges, and the MS4 is granted an exemption because the industrial discharge is complying with their general or individual permit, the industrial facility would continue to discharge in accordance with their permit.

Part II. OBTAINING PERMIT COVERAGE

A. Continuance of Permit Coverage for Permittees Authorized by GP-02-02 (Continuing Permittees)

B. Permit Coverage for Permittees Newly Designated Under GP-0-08-002 (Small MS4s not

Previously Authorized by GP-02-02)

Comment 74. Appendix 8 reference is for MS4 designation criteria. That appendix isn't attached. (18)

Response. In the final permit that reference has been changed to use the term additionally designated area. That term is defined in the definitions section.

1. In order for stormwater discharges...

Comment 75. Specify the newly designated permittees in an appendix. (42)

Response: The newly designated permittees are specified in the fact sheet.

a. submit an NOI...

Comment 76. By what date must NOI's be received by DEC? (42)

Response. This section has been modified in the final permit to require an NOI within 180 days of receiving notification from the Department.

C. Small MS4s Not Required to Gain Coverage

D. Voluntary Extension of Permit Coverage to Permittee's Full Jurisdiction

Comment 77: edit to say "...and indicating *in* the MCC..." (29)

Response. The requested change is included in the final permit.

Part III. SPECIAL CONDITIONS

Comment 78: Expectations / requirements for assessment of SWMP effectiveness in addressing 303(d) or TMDL pollutants needs to be clearly distinguished from general assessment from regular MCMs, especially if more detailed things like modeling, spreadsheets, etc. will be needed for the 303(d) / TMDL assessments. The reporting requirements should be included with reporting on each Minimum Control Measure (MCM) for the two different MS4 categories. (42)

Response. The permit language has been modified to require that the results of these assessments be included in the appropriate annual report.

Requirements for assessment of SWMP effectiveness are different for the regulated MS4s that need to address 303(d) segments and also those located within TMDL watershed. NYSDEC will support MS4s in development of the tools necessary for evaluation of discharges to 303(d) segments and in TMDL watersheds.

Comment 79: The state should require an assessment report of the permittee progress in reducing discharges of POCs to 303(d)s and TMDLs. This will assist the permittee in determining whether the SWMP is adequate to ensure no increase in POC discharge or reduce POC discharge. The results may also help DEC take an adaptive management

approach for implementing TMDLs, the results from the reports could help DEC select TMDL requirements. The reports should be due well before January 8, 2013. (62 EPA Response. The department will be providing tools to the MS4s that will allow for consistent determinations of whether there is no increase in discharges (impaired waters) or a reduction in discharges (to meet water quality standards). The final permit requires an evaluation to ensure no increase of POC in impaired waters and appropriate reductions in TMDL watersheds. Because GP-0-08-002 is a two year permit and assuming that the permit will be renewed for a five year term in 2010, requiring evaluations in 2013 will allow for those evaluations to be considered for the renewal that would then be scheduled for 2015.

A. Discharge Compliance With Water Quality Standards

Comment 80: this language duplicates part II.B. (7)

Response: The duplicate language has been deleted from the final permit.

Comment 81. Change to read “...the *Department* will notify...and shall take enforcement actions...” and “The *permittee* must take all necessary actions to ensure current and future...”. Enforcement should be mandatory because a violation was detected. (23)

Response: See response 166.

B. Impaired Waters (303(d) and TMDL)

Comment 82: “no increased discharge” is a quantitative standard. This implies a quantified baseline discharge is needed to measure performance for both 303(d) and TMDL. It further indicates that permittees could use computer modeling of BMPs and other activities and that modeling tools must account for management practices to assess whether they have achieved the no increased discharge. The requirement does fail to establish how the baseline discharge shall be quantified in absolute terms (i.e. the year, discharge rate, etc) and there are no referrals to specific, accepted data quantifying the baseline discharge evaluation. (52)

Response. No increased discharge is not intended to imply that an absolute baseline discharge is needed to measure performance. The requirement is only that, for impaired waterbodies, the total contributions from the MS4 do not increase relative to prior contributions and that, for TMDL watersheds the total contributions are decreasing in a quantified way that will meet the water quality standard.

Comment 83. BMPs that go across multiple programs, and may have been initiated well before these permits, may make it difficult to assess the contribution to no increase with models. (52)

Response. The department acknowledges that there may be some watershed specific challenges in performing these assessments. In an analysis of this nature, reasonable assumptions must be made to provide the best assessment of pollutant loadings.

Comment 84. The technical viability of models may not be good if there is minimal information available that numerically quantifies the benefits or control/efficiency for certain BMPS.(52)

Response. Stormwater is a young science and the viability of assessments is limited by the science that is readily available to the permittee. Municipalities are only expected to use the most cost effective tools to assist municipalities to quantify the benefits of implementing the program. This approach will be most effective where inter-municipal agreements between all the MS4s in a particular watershed allow for a consistent assessment of that watershed.

Comment 85: prior to requiring assessment of progress to achieve the “standard” the MS4 permit should:

- 1. Identify DEC expectations (e.g. techniques, methods, data sources) for the determination of acceptable baseline discharge, trend analysis;**
- 2. Have scheduled allowances to allow for completion of tasks (e.g. sampling analysis, flow monitoring, etc.) to quantify the baseline discharge;**
- 3. Include provisions to account for instances where BMPs were implemented prior to development or identification of the baseline discharge loading condition and continue to be implemented. (52)**

Response. The period in the permit before these more detailed assessments are required is to allow the department and effected permittees to develop tools, protocols, and data to make such assessments. A preliminary evaluation of modeling options is included in Appendix D.

BMPs implemented prior to development of the baseline, but after permit coverage (or where EPA approved the TMDL or listing of the impaired segment after permit coverage, after such EPA approval), may be credited toward meeting the no net increase requirement for impaired waters or reductions necessary to meet TMDLs. Accounting for existing BMPs would also be important in determining reductions that would be credited for maintenance activities.

Comment 86. Would an acceptable alternative to modeling by discharge monitoring (sample collection, analysis and flow measurement), calculation of loads and trend analysis of the loading during various recurrence interval rain events? It may take longer to gather baseline data because of the recurrence interval frequency, it may be more cost effective or practicable for smaller “non-traditional” MS4s, especially those with only a few outfalls. If possible, ID this as an alternative in the permit. (52)

Response. 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.

1. 303(d) listed waters

Comment 87. This is a section where it is critical to articulate the intent of this requirement. If the intent is to determine a theoretical loading rate from the land within the MS4's jurisdiction, then a less complex model may be used, with less field work required by the MS4 staff. If the intent is to determine theoretical loading rates from outfalls into the 303d waters, the level of effort to comply is more onerous. If it is the second option, the DOT would have to determine theoretical loadings to 303d waters from the highway right of ways and all lands that drain onto right of ways. If MS4s model in the same way, there would be duplicative modeling for the same areas, which would corrupt the results. (48)

Response. Ultimately any MS4 is responsible for what POCs are discharged from their conveyances. To satisfy the requirement to assess discharges to impaired waters, non-traditional MS4s (including State and county DOTs) would be responsible for showing no net increase in pollutant loads from their MS4. For these waters, a theoretical loading computation to determine relative loadings would be appropriate to demonstrate no increased discharge. For assessments of effectiveness in TMDL watersheds, the model used should integrate both traditional and non-traditional contributors at a watershed level. Such models should be capable of incorporating the effectiveness of specific practices as they relate to the pollutant of concern. In the case of watershed models, the modeling effort would be most meaningful if both traditional and non-traditional MS4s are collectively modeled for the entire watershed.

Comment 88. What constitutes an “increase” of a POC to a 303(d) waterbody? Is it relative to current discharges with the SWMP or historic discharges without the SWMP in place. (7)

Response. To assess the effectiveness of SWMP implementation in protecting 303(d) listed waters, the increase should be determined by comparison, to the extent feasible, to the waters at the time of permit authorization or if listing occurred after permitting, the time of listing. Changes of land use and practices can be used as a surrogate for discharge loadings. Stormwater offsets/banking, pollutant specific standards or alternative sizing of BMPs are examples of potential tools for assessing discharges to impaired segments.

Comment 89. To ensure no increase in concentration of pollutants in the discharges, like silt/sediment, pathogens, it would require the installation of swirl separators or filtration devices at each outfall in addition to conducting ongoing sampling. Failure to do this would result in non-compliance with the permit. No MS4s have the resources to do this. Clarify or add in that this should be done to the MEP. (33)

Response. No net increase as it is used in the permit refers to increase from existing conditions due to a change in practices or landscape. No net increase does not refer to the increase in pollutants that occurs as pollutants are added to rainwater after it falls and before it is discharged..

Comment 90. Permittees need to know what the Department would consider acceptable to satisfy this requirement. There is insufficient detail right now. (33, 58)

Response. It is not appropriate to specify a single level of detail for all assessments. Some very simple discharge scenarios that exist for limited sources, for which very simple assessments are appropriate. At the other end of the spectrum, there are larger more complex watersheds with numerous inputs that require much more rigorous assessments.

Comment 91. The requirement for no increase of POCs to 303(d)s won't help TMDL watersheds meet the goal of reducing POCs. (7)

Response. Permit language has been added that requires SWMPs to ensure that POC is reduced so that the WLA is met.

Comment 92. It is unclear if “listed POC” is from the definition or referring to what is on the 303d list. (18)

Response. Listed POC refers to the pollutant on the impaired waterbody list.

Comment 93. Define Directly or indirectly, it's not in the definitions. (18, 65)

Response. Directly or indirectly has been deleted from the final permit.

Comment 94. In areas that are developing, how can a permittee ensure that they have no increased discharge of a POC when even with the best implementation of BMPs there will be an increased discharge of POC.(66)

Response. In accordance with EPA rules, discharges that increase the total loading of a POC to waters that already exceed the water quality standard for that POC are not permitted. Meeting this permit requirement can be accomplished through extraordinary treatment alternatives for the POC or POC loading reductions elsewhere in those waters, or a combination of extraordinary measures and offsetting loading reductions. For example, MS4s could require or encourage redevelopment in areas that contribute significant loadings of the POC to the listed waters. In this case, reduction of loads can be accomplished by following established Stormwater Management Practice design standards or implementing better site design/low impact development.

Comment 95. Is the purpose of modeling data to generate data regarding the 303(d) listed waters and their POCs. A sampling and monitoring standard or mandate would provide direct data for that purpose, however, the additional cost without the benefit of state or federal funds is questionable. Strongly object to the additional costs. (66)

Response. See response to comment 86.

Comment 96: The model suggests a trend analysis be done, like at the beginning and end of the permit. This is ambiguous and labor intensive with little or no environmental benefit. (48, 66)

Response. A basic modeling effort is equivalent to simple record keeping of the existing conditions and employed practices. Such a basic effort consists of collection of data on existing conditions to the extent practicable, available controls and BMPS, establishing an understanding of the watershed, and tracking of the BMPS implemented by SWMP.

Comment 97: Several comments expressed concern that permittees are expected to establish baseline values through in-situ monitoring in order to determine changes in discharges. And to determine no increase of pollutants in 303(d) would require first sampling each outfall under various conditions and then continue sampling . (18, 33, 66)

Response. Modeling to determine not net increase in discharges to impaired waters is intended to show relative reductions, not absolute reductions.

Comment 98: Concern that modeling is expensive, excessive and extensive for permittees. Essentially it is the creation of a TMDL for the 303(d) watersheds. The programs suggested require significant research and identification of pollutant sources that may be beyond the scope of what municipalities are capable of. Creating a defensible model will be too expensive. No alternatives are provided. (18, 28, 33, 49, 58)

Response: The permit is not intended to require the same level of effort that would be undertaken in a watershed wide, TMDL analysis. Rather the permit requirement is intended to allow for an alternative to performing the significant multiple outfall, transient event monitoring that could be necessary to demonstrate no net increase or compliance with TMDL requirements through

monitoring of discharges. The intention is for MS4s to adopt usable tools, supported by the department, to assess the effects of changes to practices or to the landscape.

Comment 99: There is a concern that the proposed modeling will demonstrate no increase. Additionally, for statewide linear systems, like DOT or thruway, it is unclear if the level of effort necessary to do the model is justified by the minimal environmental benefit that may be created. (65)

Response. The modeling required by the permit is intended for tracking and evaluation (accounting for BMPs and changes to the landscape). Transportation agencies would not be expected to, on their own, model the whole watershed to evaluate road drainage. While they are generally limited to practices within linear right of ways, cooperation with MS4s would allow them to model and implement a wider range of options for meeting permit requirements (e.g. banking/trading systems).

Comment 100: The implementation and documentation of appropriate stormwater quality improvement controls (ie. SWPPPs, BMPs, IDDE efforts) should be sufficient to ensure no increased discharge of POCs to 303(d)s. Consider doing a 303(d) assesment instead of modeling. This would involve doing Section 305(b) Assessment Methodology, Jan 2002 - and do “evaluated waters” that does an assessment based on land use, predictive modeling, BMP work, etc.. (18)

Response. The department agrees that documentation of appropriate stormwater quality controls is one important item to track through the appropriate model. The other activities that would result in increased stormwater discharges should also be documented. The appropriate model is the tool that would be used for such documentation. The methodology documented in the Section 305(b) Assessment Methodology is not adequate in that it does not account for changes to the landscape and the noted stormwater quality improvement controls tributary to the MS4.

Comment 101. Need more guidance on modeling. Level of detail needed is not clear. Consultant’s don’t want to recommend a specific model to a permittee without know that it will meet DEC’s minimum standards. The state should provide a model and training, for those that want to use them. (28, 33)

Response. The department is committed to providing guidance on the type of modeling that will be acceptable to satisfy this permit requirement.

Comment 102: Modeling should be done on a regional basis; modeling watersheds and pollutant sources should be a function of state agencies. (49, 57)

Response. The department agrees that the modeling necessary to develop TMDLs is the responsibility of the state and federal governments.

Comment 103: In developing areas with development being a cause of non-point source pollution, how can a permittee “ensure” that as they grow they are not increasing the discharge of POCs to a 303(d) water with a model? If models are to be used, they should be only as predictive or decision-making tools to provide an estimate of the expected increase in POCs that a particular development activity will have to a particular 303(d) waterbody or segment. (66)

Response. The permittee is responsible for demonstrating compliance with the no net increase permit requirement. See also the response to comment 88.

Comment 104: In order to have models drive policy and decision making in 2013, the models need to be verified, with base line or historical monitoring regarding the POCs and current, ongoing monitoring data to make comparisons. Monitoring data could then be used with models to make more informed decisions based on estimated future conditions, project to project. (66)

Response. Baselines and calibration monitoring are valuable inputs to assessments, but not essential where the assessment is made to determine relative changes to loadings.

Comment 105: 2nd paragraph. “This assesement may be done...” delete the 2nd may be done. (29)

Response. Correction made.

Comment 106. Determining success of POC reduction work in a TMDL watershed would be more effective / consistent if modeling was done at a watershed scale and not by individual MS4s. DEC should determine the success or shortcomings of the TMDL programs on a regional scale. The permit should contain language that says the model should be demonstrated to be equal to or more representative than the modeling done for the TMDL. DEC should provide a model, a list of minimum acceptable modeling programs for the MS4s to use, or at least be the DEP model, which wouldn’t be very simple. (7, 9, 10, 33, 43, 44, 64)

Response. The department agrees that there are benefits to consistency within a watershed. The credits for reductions will be more consistent between MS4s. The department encourages cooperation and collaboration between municipalities in assessing pollutant loadings to impaired waters and from TMDL watersheds.

Comment 107. The model suggests a trend analysis be done, like at the beginning and end of the permit. This is ambiguous and labor intensive with little or no environmental benefit. (48)

Response. The trend analysis referred to is intended to consider changes in activities and the landscape when the analysis is performed. The models would be used to aid decisions about activities within the water quality limited watersheds. They would also be used as a measure of compliance with permit requirements.

Comment 108. Is it correct to assume that discharge reductions would be demonstrated solely through the use of modeling. To determine if there are actual POC decreases with sampling would take an extended period of time and expense. There are many jurisdictions through the watersheds. The models or methods should all be the same to get consistent results. (43, 44)

Response. Yes, reductions would be simulated and tracked by the model. Using a consistent model within a watershed would be necessary to make objective comparisons between projects and permittees. Use of models provides an analysis tool for long term implementation of the program for determining the most effective reduction of the POC. Monitoring may also be a

viable option if the watershed/MS4 orientation and resource availability is suitable for siting and effective data collection.

Comment 109. Individual permittees do not have the knowledge to develop and use a model. DEC should provide models and training. (14, 33, 43)

Response: The department is committed to supporting usable model development for MS4 permittees.

Comment 110. How will “base” or background conditions be determined in order to have some point against which the permittees can measure progress. (14)

Response: In the absence of quantitative baseline data, determinations of compliance with the permit would be based on comparative analysis. Such a relative analysis is particularly useful in the absence of watershed wide analysis; e.g. where the focus is on site specific discharges or changes to the landscape or practices in smaller land areas.

Comment 111. A more accurate model would be created if information was collected on a watershed basis and overseen by a regional entity or DEC. (10)

Response: See response to comment 106.

Comment 112. The permit should not impose additional requirements arbitrarily without reference to the analytical tools that have been designed to determine the pollutant reducing impacts of various upgrades in the Onondaga Lake watershed. (21A)

Response: The analytical tools that have been designed to determine pollutant reducing impacts of various upgrades in the Onondaga Lake watershed should not be discarded where they allow for assessments of MS4 discharges.

Comment 113. “...must ensure discharges of the POC to the TMDL waterbody are reduced through these or additional changes to the SWMP.” The permit fails to provide a method to quantify individual sources of non-point source pollution or to include a quantified load allocation for sub-watersheds. “Reduced” is too vague for evaluation and enforcement; clear end points are needed. (23)

Response: The department will facilitate development of models for affected MS4s and watersheds. To make the requirement enforceable, the permit has been modified to use the terminology ‘department supported’ modeling requirement.

Comment 114. “...must ensure discharges of the POC to the TMDL waterbody are reduced through these or additional changes to the SWMP.” The P EMC targets in Chapter 10 of the Design Manual don’t agree with the export loads computed by DEP Phase I and II TMDL calculations. There is uncertainty of what values to use because they (Chapter 10 results versus Phase I and II TMDL modeling) result in dramatically different loading calculations. (23)

Response: Neither the current state design standards, nor the enhanced phosphorus removal standard, use land use loading factors or export coefficients for sizing or design of stormwater management practices. The enhanced removal standard uses the National Stormwater Quality Database to provide a basis for demonstrating the relationship between land use changes and

expected concentrations of total and dissolved phosphorus in runoff. Site-specific data is difficult to obtain because it requires years of intensive monitoring. That level of monitoring is not available for individual development projects. In the past, use of export coefficients were based on an average of available literature values.

Comment 115. This is a section where it is critical to articulate the intent of this requirement. If the intent is to determine a theoretical loading rate from the land within the permittee's jurisdiction, then a less complex model may be used, with less field work required by the permittee's staff. If the intent is to compare theoretical loadings to the TMDL allocations, it may be likely that full wasteload allocations may be required. If the intent is to determine theoretical loading rates from outfalls into the 303d waters, the level of effort to comply is more onerous. If it is the second option, the DOT would have to determine theoretical loadings to 303d waters from the highway ROW's and all lands that drain onto right of ways. If MS4s model in the same way, there would be duplicative modeling for the same areas, which would corrupt the results. (48)

Response: The models are intended to document and track loading rates from land areas tributary to the permitted MS4 as a means of assessing compliance with requirements for preventing increases of loadings to impaired segments and for decreasing loadings to from TMDL watersheds. The department encourages cooperation and collaboration between MS4s in making such assessments.

Comment 116. With on-going development, the POC will increase, regardless of how aggressively proposed BMPs are implemented. Will the POC reductions be measured on a per capita basis? Is the intention for an overall reduction? If so, how will this be resolved with the need for continued economic development? (43, 44)

Response. See response to comment 94.

Comment 117. Permittees aren't doing additional Minimum Control Measures, they are doing "Prescribed Best Management Practices" to comply with TMDLs. Make the changes accordingly. (42)

Response. The final permit labels the requirements Best Management Practices rather than minimum control measures.

Comment 118: First paragraph, last sentence, change wording to something like: "The permittees must ...are reduced in accordance with the load allocations specified in the TMDL. Permittees must implement the additional BMPs specified for each MCM as provided in either Part IX. A, B, C, or D, as applicable in this General Permit." (42)

Response: See response to comment 91.

Comment 119. The permit should specify here and in the appendices if the maps are topographic drainage and / or stormsewershed area. Recommend that MS4s be directed to more precise GIS depictions of TMDL waterbody contributing areas if accessible. (42)

Response. More precise GIS depictions are available from the department. The requirements that apply within the mapped areas apply only within the MS4s storm sewersheds.

Comment 120. The permit says that permittees will be taking satisfactory first steps towards achieving compliance with TMDL requirements if they implement the required control measures. EPA recognizes that BMPs are acceptable as effluent limits where a BMP approach is the most appropriate means to control pollutants to achieve the goals of the Clean Water Act. It is also understood that the BMPs are expected to result in the achievement of water quality standards. EPA suggests that this concept be expressed in the permit language. Additionally, the description of the BMPs as first steps leads one to think that next steps will be forthcoming if the standard is not met. EPA suggests that DEC lay out when and how it will be determined that BMPs beyond the first steps are necessary. Consider additional changes to the SWMP after the permittee assesses its progress towards meeting the necessary reductions for the TMDL. (62 EPA)

Response. See response to comment 91. In addition, the final permit has been modified to include language that requires the permittee to consider additional changes to their SWMP after assessing its progress towards meeting the necessary reductions for the TMDL.

Comment 121. If a permittee does not discharge or otherwise contribute specific POCs to the environment, then it is unreasonable to require the permittee to provide evidence of a reduction or to participate in a watershed reduction program. This places an unwarranted financial burden on the permittee. There should be an exemption to these requirement for permittees who do not discharge or contribute specific POCs to the environment. (65)

Response: Presumably, if a permittee clearly does not contribute a specific POC to the environment, then demonstrating that no contribution is made should be relatively simple.

Comment 122. Watershed not Wastershed in title. (48)

Response. The suggested change has been made.

3. Future TMDL Areas

Comment 123. suggest change language to “...to ensure that the POC is reduced so that the WLA is met.” (62 EPA)

Response: See response to comment 91.

Comment 124: This section should explain how permittees would be notified that this requirement would apply to additional TMDL watersheds. (48)

Response. The section has been changed to note that permittees will be notified in writing.

Comment 125: Future TMDL areas should comply with the applicable prescriptive BMPs as noted for other TMDL areas. (42)

Response. The prescriptive BMPs may not be applicable for future TMDLs. Where such BMPs would be appropriate for a future TMDL area, the permittee can use those BMPs to satisfy the requirement to modify their SWMP. In addition, future modifications and renewals to the permit can include those prescriptive BMP requirements.

Comment 126: Requirements for revising SWMPs to achieve future TMDLs are much more

flexible than those for meeting an existing TMDL. MS4s in future TMDL areas should submit a report assessing and evaluating their SWMP effectiveness, similar to the requirements in III.B.1. and III.B.2. (62 EPA)

Response: The final permit includes a requirement for future TMDL areas to assess progress and evaluate their SWMPs.

Comment 127: Permit compliance should not hinge upon a pledge by the permittee to fulfill requirements that are non-existent and unknown at the time of permit application. In those situations where a permittee is a negligible contributor of a future identified POC, it is unreasonable to require evidence of POC reduction or to mandate participation in a watershed reduction program without appropriate permit modification. (65)

Response. Where a permittee is a negligible contributor, and does not wish to demonstrate that the contribution is negligible, the permittee has the option of applying for an individual permit. In the case of the thruway authority, for some pollutants it may be relatively simple to demonstrate negligible contributions.

Part IV. STORMWATER MANAGEMENT PROGRAM (SWMP) REQUIREMENTS

A. SWMP Background

Comment 128. At the outset, MS4s were told that the NOI would suffice as their plan, so this requirement is unfair. This needs to be made clearer as a permit requirement. (33, 42)

Response. At the outset, MS4s were told that the NOI would suffice as their **initial** SWMP.

Comment 129. Will there be a grace period for the development of the SWMP plan? This is a significant undertaking that was not required under the original MS4 permit.(44) The permit should clarify by what date the SWMP plan is required to be completed. (48)

Response. The final permit allows existing permittees until March 9, 2009 to assemble the SWMP plan, unless otherwise notified by the regional water engineer that the SWMP plan is required for the department to complete an audit of the MS4 SWMP.

Comment 130: The state should provide guidance and funding on how to develop SWMP plans because development of this documentation will divert resources from program implementation.(13, 44) The SWMP Plan should be optional. The documentation would be costly, time consuming, and take too many local municipal resources. (33)

Response. Information about how to create a SWMP plan and what should be included in the SWMP plan is in the SWMP definition. The intent of the SWMP plan is to be a repository of all documentation related to the permittee's SWMP. A copy of all of the documentation would be maintained in this one location. It is not the intent of the Department for permittees to spend resources to create an entirely different document; copies of procedures, local laws, etc. are sufficient to include. However, if a permittee does not have their procedures in place for SWMP implementation, those will need to be created and a copy of each procedure put into the SWMP plan. Permittees concerned about the resources to put together the required procedures should keep in mind that the requirement for procedures to implement the SWMP is not from the SWMP plan requirement. The permittees were required by GP-02-02 to be able to implement their

SWMP and without written procedures, permittees cannot ensure that the information is available to implement the SWMP consistently over time.

B. SWMP Coverage Area

Comment 131: Specify whether newly designated permittees are required to implement their SWMPs and/or prescriptive BMPs throughout their jurisdiction. (42)

Response. SWMP are only required by the permit to be implemented in the Urbanized or Additionally Designated areas.

Comment 132. The draft permit states that small MS4s will be responsible for State DOT storm water that enters the regulated area from the state right of way without entering the town's drainage system. This would unduly direct responsibility from the state to the town and is not acceptable. The potential for an accidental chemical spill on DOT property to end up being the responsibility of another permittee inappropriate and must be revised. (64)

Response. The permit requires the Town to regulate what drains to the State DOT right of way from what is within the Town's jurisdiction, not be responsible for what occurs in the DOT right of way.

C. SWMP Development and Implementation for Permittees Authorized by GP-02-02 (Continuing Permittees)

Comment 133. This is the first use of MCC. It should be spelled out and the acronym include in the acronym list. (48)

Response. The requested change has been made in the final permit.

Comment 134. Instead of saying continuing permittees are required to fully implement, it should be continue to implement and that a permittee may modify its SWMP if it determines that changes are needed to improve the effectiveness of their SWMP (as differentiated from implementation). (42)

Response. The requested change has been included in the final permit.

D. SWMP Development and Implementation for Newly Regulated Permittees (Small MS4s not Previously Authorized by GP-02-02)

E. Minimum Control Measures

F. Cooperation between MS4s Encouraged

G. Reliance Upon Third Parties

Comment 135. Line 6 Cert statement - stormwater not storwmater. (48)

Response. Comment noted.

Comment 136. What are the “terms and conditions of the permittee’s SWMP”? Are they above and beyond the permit requirement? (33)

Response. The terms and conditions are the components of the permittee’s SWMP. They must meet the permit requirements. The only time they would be above and beyond permit requirements is if the permittee’s program was designed to go above and beyond permit requirements.

Comment 137. who signs the third party agreement, the third party, all permittees involved, etc?? (33)

Response. The entity that signs the agreement should be the entity providing the 3rd party service and all permittees for which the service is being provided.

Comment 138. Clarify do we distinguish between what types of third party activities require signature for the certification statement (the example given was minor road surface repairs or shoulder work versus paving / repaving). (2)

Response. Any activities that are covered by the SWMP, but are performed by a third party, require assurances that adequate protections are in place.

Comment 139: Is this certification an extra layer of administration that may not be needed in every situation to achieve the goals of the permit. (44)

Response. The explicit certification could be construed as overly prescriptive in a way that may not be needed in every situation to achieve the goals of the permit. The explicit requirement to use the proposed certification has been removed from the final permit. Nonetheless, the onus is on permittees to have reasonable mechanisms in place to assure compliance with the terms and conditions of the permit for the work provided by a third party entity. The certification remains as an example to MS4s wishing to use that certification as the mechanism to assure compliance. Aside from the basic requirements set forth in Part IV.G. the permit does not dictate the extent and nature of a third party’s obligation to the MS4. Furthermore, the Department reserves all rights to enforce violations of this permit and all applicable laws and regulations against all potential parties.

Comment 140. This certification requires a third party to agree to accept liability for any non-compliance that may be caused by the MS4s. This should be limited to liability for actions caused solely by the third party and should be limited to intentional or grossly negligent actions. Not for inadvertent omissions or errors. To do otherwise would discourage the MS4s from working with a coalition. (33)

Response. See response to comment 139.

Comment 141. Within the statement, clarify “corrective actions”. A context is not provided concerning the need for corrective actions. Perhaps it would be more effective to say “...and agree to implement / deliver / provide the best management practices specified below by (date)...”. (42)

Response. See response to comment 139.

Comment 142. This section needs to be modified to allow greater flexibility in the language that is included in the certification to ensure that it is relevant to the specific services being provided. For example, if a third party is developing procedures for a permittee, the requirement to “implement any corrective actions” is irrelevant. (65)

Response. See response to comment 139.

Comment 143. Must the certification be signed in situations where the third party entity is effectively managed by the MS4 (ie the contractor doesn't do anything without MS4 oversight). (2)

Response. See response to comment 139.

Comment 144. Suggest that language be included to exclude contracts between MS4s from this. Contracts between MS4s frequently occur to perform activities to comply with the program. All parties are already aware of the requirements. (18)

Response. See response to comment 139.

Comment 145. This certification appears to be more applicable to “non-traditional” MS4s. They are more frequently going to rely on contractors. Certification of a limited number of contractors with primary responsibility for implementation of the SWMP appears to be manageable. For municipalities that usually use specialty subcontractors for specific tasks (street sweeping, catch basin cleaning, etc) on an as needed basis, this certification may be an unmanageable task that does little to further the goals of the program. This certification would require complete knowledge of the SWMP. If the MS4 provides only a limited portion, the third party will have limited knowledge and take on unlimited liability. Additionally, if they are only doing a specialized task, why would they want to invest the effort to learn and understand the entire SWMP. There should be limits placed on who must sign this type of certification; it should be those parties who are taking on major aspects and responsibility for implementing the SWMP. Those parties that play a minor role in implementation, there are more direct legal means to control their behavior, such as clear specifications on how their tasks should be completed and violations of contracts and laws that govern the work they do. (44)

Response. See response to comment 139.

Comment 146. In light of 3rd party certification, what would need to be done if a third party was doing the regional education and outreach. Under the certification, they would need to be familiar with each permittee's SWMP that they are working for. It would not make sense for them to have to certify as they would not be likely to “directly or indirectly cause or contributed to a violation of water quality standards. (44)

Response. See response to comment 139.

Comment 147. How would 3rd party certification work for non-governmental organizations that were helping to do MCM 2? Would they be liable for knowing all the SWMPs. (44)

Response. See response to comment 139.

Comment 148. Erie County contracts with various Towns to plow Country roads and Erie County contracts with NY DOT to plow some state roads. Do the towns have to certify compliance with Erie Co's SWMP and does Erie Co have to certify compliance with NY DOT's SWMP? If the Towns, County and DOT all have approved SWMP, is cross certification necessary? (19)

Response. See response to comment 139.

Comment 149. Suggest that language be included to exclude Coalitions and Partner Agencies from this requirement. Concerned that coalitions and partner agencies that do work and get paid (through grants or otherwise) will have to sign and this will place an unnecessary burden on those groups (coalitions, coalition members, partner agencies). These agencies already understand the program and are already aware of the requirements. The DEC and EPA wants these groups to all work together to develop and implement SWMPs. Why do they need to sign? Could they allow the language in the permit or allow for existing contracts or "equivalent" documents to suffice? Some coalitions have spent a lot of time and money reworking their contracts with the MS4s to outline the work they were planning to do and don't want to have to redo them to include this language. (18, 33)

Response. See response to comment 139.

Part V. PROGRAM ASSESSMENT , RECORD KEEPING, REPORTING AND CERTIFICATION REQUIREMENTS

A. Assessment

Comment 150. Clarify how this ties into the annual report. (1)

Response: The goal of the assessment is to determine if a permittee's SWMP is working and what changes may need to be made. It is probable that the information that permittees need to collect to determine program effectiveness is required to be reported in the annual report. Any changes to the SWMP resulting from the assessment and justification for those changes need to be reported in the annual report.

Comment 151. Why was the text removed that stated that the DEC "may, at its discretion, require monitoring of discharge(s) from the permitted activity". (7)

Response. This language was removed because it has not been used in the life of the first permit round.

Comment 152. DEC needs to provide details about what the MS4s need to show to demonstrate the effectiveness of each MCM. (33)

Response. EPA has provided guidance on how to evaluate stormwater management programs. That guidance is available at:

http://cfpub.epa.gov/npdes/docs.cfm?program_id=6&view=allprog&sort=name#ms4_guidance

In addition, for TMDL watersheds and Impaired waters, the permits require modeling to assess effectiveness.

Comment 153. Assessment of this DEC program should be a DEC responsibility. (34)

Response: Because each permittee is responsible for their SWMP, they must determine if their SWMP is achieving the goals set. The DEC will be auditing MS4s to assess compliance with permit conditions.

B. Recordkeeping

Comment 154: line 5 - business not business (48)

Response. The requested change has been included in the final permit.

Comment 155. DEC should develop a model record keeping program that will make it more efficient for the municipalities and regulators. (44)

Response: There are commercially available record keeping programs. In time, the department may be able to make available a model record keeping program provided that program does not preclude the use of such commercially available programs.

C. Annual Reporting

1. Annual Report Submittal

Comment 156. It is recommended that the annual report be required to be documented but not submitted.(40)

Response: The annual report must be submitted to allow the Department to determine if the permittees are complying with the permit. To ease this reporting burden, the final permit has been modified to include a provision that allows for electronic submission of the report in a format acceptable the Department.

2. Shared Annual Reporting and Submittal

Comment 157. DEC should also provide for the option of each individual permittee submitting their annual report with their individual activities with the group activities attached. (67)

Response. The language in the draft permit was to allow for the submission of one annual report for a group of permittees.

Comment 158. Shared annual reporting would be confusing and doesn't work. (44)

Response. Shared annual reporting is not for every situation. Shared reports are intended to facilitate having one entity as the lead in an incorporated or watershed area. Examples of this regional lead include Counties leading for Cities, Towns and Villages, Towns leading for Villages and Organizations formed under an intermunicipal agreement leading for Counties, Towns, Cities

and Villages.

Comment 159. A supplemental form may be needed to facilitate reporting of individual MS4s numbers for operation and maintenance (primarily MM6). May need to do similar form for other MCMs? (66)

Response. Agreed.

3. Annual Report Content

Comment 160. What is the annual reporting year for year 5. What is the annual reporting year for year 1 under the new permit. (2)

Response: Per Part V.C.3, Year 5 of GP-02-02 - March 10, 2007 - March 9, 2008. Year 1 of GP-0-08-002 - March 10, 2008 - March 9, 2009.

b. An assessment/evaluation of :

Comment 161. If common sense activities have to be quantified for the annual reports, provide guidance and examples of how it can be done. (56)

Response: EPA has provided guidance on assessments at:

http://cfpub.epa.gov/npdes/docs.cfm?program_id=6&view=allprog&sort=name#ms4_guidance

c. Results of information...

Comment 162. Clarify how this information should be presented in the annual report. (1)

Response. Where available, this information may be presented within an attachment.

D. Annual Report Certification

Comment 163. 2nd paragraph, last sentence: "...as requested on the MCC form." (29)

Response. The requested change has been made in the final permit.

Comment 164. Why was text removed that stated that DEC would make all submitted information from MS4s available for public review? (7)

Response. The permit sets out requirements for the permittee, not requirements for the department. The department will still make all submitted information that is not protected by law available upon request.

Part VI. STANDARD PERMIT CONDITIONS -

Comment 165. need to add permit transfers, anticipated non-compliance - in the event any planned changes or activity may result in noncompliance. (62 EPA)

Response. Language on permit transfers and referring to 6NYCRR 750 on anticipated non-compliance have been included in the final permit.

A. General Authority to Enforce

B. Duty to Comply

C. Enforcement

Comment 166. This section should be expanded to articulate that penalties can be expected to be commensurate with the level and environmental impact of the violation.

Administrative deficiencies should not have the same penalties as water quality violations. If there are internal policies within DEC to prohibit DEC from penalizing all violations equally, the permittees should be aware of that. (48)

Response. Penalties assessed against a respondent are often very fact driven, based upon the nature, scope, frequency and duration of the violation(s). The department makes compliance response guidance available as Technical and Operational Guidance Series documents at:

<http://www.dec.ny.gov/regulations/2652.html>

D. Continuation of the Expired General Permit

Comment 167. There is a concern that continuation of permit coverage will require permittees to meet more restrictive permit requirements that permittees cannot meet on the effective date. (2)

Response. This sentence is solely for permit coverage continuation. It does not imply that permittees can or should be able to comply with all of the terms of the permit upon its effective date. Compliance must be achieved by specified timelines or the expiration date of the permit.

E. Technology Standards

Comment 168. This language should include a time frame and procedures for notifying regulated permittees of any effluent standards or limitations promulgated by EPA. There is concern that DEC may fail to adequately inform permittees of changes in effluent standards or limitations and still take enforcement should the permittee fail to promptly modify their SWMP plan. To clarify, language should be added in the first line such as: “Permittees, upon adequate and timely notification of new effluent standards or limitations promulgated by EPA (written and e-mail) must comply with all...” (63, 67)

Response. The final permit has been modified to clarify that the permittee will be notified in writing.

Comment 169. Requiring compliance with any technology standards during the middle of a permit cycle appears to be unworkable; our assumption is that if EPA established effluent technology standards, a wholesale revision would need to be made to the current permit. It

seems the best approach would be to phase in compliance with technology standards along with changes with the permit. (44)

Response. See response 168. Alternatively, the permittee has the option of applying for an individual permit where general permit conditions are inadequate.

F. Need to Halt or Reduce Activity not a Defense

G. Duty to Mitigate

Comment 170. The current permit does not make it clear what DEC's expectations are to satisfy this requirement. This appears to be equivalent to "Duty to Comply" (B above). (44)

Response. They are not equivalent. "Duty to Comply" relates to the permittee's duty to comply with the permit requirements. "Duty to Mitigate" relates to a permittee's duty to minimize or prevent any discharges that would violate GP-0-08-002 if there's a likelihood for an adverse affect on human health or the environment.

Comment 171. Clarify this section by defining the word "reasonable" which is used twice. (48)

Response: "Reasonable" will be determined on a case-by-case basis, taking into account site specific information pertaining to the discharge in violation of the permit (such as circumstances leading to, responses to, and results from any discharge(s)).

Comment 172. Is Duty to Mitigate being used as the basis for the terms of the Special Conditions listed in this permit? (44)

Response: No. Duty to Mitigate applies to the subject discharges to any water body.

Comment 173. Is DEC anticipating there may be situations where permittees may need to go beyond the minimum requirements of the permit to satisfy Duty to Mitigate. Are there examples of this situation? (44)

Response. Any water quality violation could trigger the duty to mitigate, in particular acute water quality violations (e.g. those due to a spill or sanitary cross connection).

H. Duty to Provide Information

I. Other Information

J. Signatory Requirements

1. Notices of Intent

Comment 174. Instead of saying "agencies" say "municipal entity". (42)

Response. To avoid confusion relating the federal definition of MS4 (to include federal and state entities), the language is unchanged in the final permit.

2. Reports Required and Other Information Requested

Comment 175. Clarify what specific reports are subject to this requirement and what “other information requested by the Department” is. (2)

Response. This requirement is intended to address unforeseen reports, that may be required as a generic condition of the permit. Currently there are no other routine reports required for every permittee.

a. The authorization...

Comment 176. Does the MS4 need to submit a new signatory authorization form when the permit renews if there have been no personnel changes? (2)

Response. No, refer to Part VI.J.2.e.

c. The written authorization...

Comment 177. This section is a duplication of language in (a). (2, 7)

Response. The requested change has been made in the final permit.

e. Initial dual authorization

Comment 178. Clarify the meaning of dual authorization. (2, 42)

Response. Dual authorization is when a person in a position that is authorized to sign documentation required by this permit grants authorization to another individual or employee position to sign the documentation. To avoid confusion, this section has been re-labeled signatory authorization.

K. Penalties for Falsification of Reports

L. Oil and Hazardous Substance Liability

M. Property Rights

N. Severability

O. Requiring an Individual Permit or an Alternative General Permit

1. At its sole discretion...

Comment 179. change “person” to MS4. (42)

Response. Person is correct.

Comment 180. Should “discharger” be “permittee”. (2)

Response. The requested change has been made in the final permit.

P. Other State Environmental Laws

Q. Proper Operation and Maintenance

Comment 181. Is there any way to rewrite this so that it clearly applies to MS4s. (44)

Response: This is standard language that must be in every permit.

R. Inspection and Entry

Comment 182. The language no longer includes EPA or the State, is it an intentional omission? (6, 7)

Response: The commissioner is the department, the regional administrator is EPA. Since it would be more clear, the final permit includes references to 'EPA' and 'NYSDEC.'

Comment 183. County health departments granted right of entry and inspection. County health departments are not an approving agency for stormwater runoff for the MS4 program. There does not appear to be any need to give them these rights. (24)

Response: County health departments may need access so they can do inspections and track down of illicit discharges if they have entered into an agreement with a local municipality to do such work.

S. Permit Actions

Part VII. MINIMUM CONTROL MEASURES - TRADITIONAL LAND USE CONTROL

Comment 184. 'MS4s' be on the end of the title. (48)

Response: The requested change has been made in the final permit.

Comment 185. Put specific titles of documents into an Appendix. (42)

Response: Titles will not be put into an Appendix because the list may become outdated between permit modifications.

Guidance Documents as Regulatory Requirements

Comment 186. At the beginning of each MCM, it says that all permittees must do the activities within the permit in accordance with State and Federal assistance and guidance documents. Does this reference make those documents a regulatory requirement by reference? What are the compliance implications if a permittee doesn't meet the documents? If the documents change, which should they comply with and what versions would the Department use for inspection / enforcement? (2, 26, 37, 65)

Comment 187. The guidance documents were developed as non-regulatory tools. They mandate specific methodologies for implementing local stormwater programs and restrict the ability of the localities to tailor their SWMPs to local conditions. Recommend "guidance documents" be omitted. (13, 26)

Comment 188. How can the DEC rely upon guidance documents that may or not be final and may or may not exist as of the effective date of the permit be a condition of permit compliance. The procedures for developing and issuing guidance documents are substantially different than from those used to develop and promulgate new regulations. Making the permit compliance conditional on compliance with existing and future guidance documents, makes it seem that DEC is circumventing its own regulatory procedures and significantly removing the opportunity of the regulated public to comment on key components of the proposed regulations. (65)

Response. (for 186, 187, 188) Except where explicitly intended by the permit, language in the final permit has been changed to recommend that programs be developed using the guidance documents, not required to be in accordance with the guidance documents.

Assessment of Program Effectiveness

Comment 189. The “...develop, record, periodically assess and modify as needed measurable goals...” does not allow flexibility in setting such goals to allow the information to be tracked and recorded so it can be of use to the MS4 and not just a yardsick that was invented to satisfy this language. As programs mature, the goals will be more monitoring/maintenance tools, not escalating requirements for improvements. (19)

Response: The above referenced language does not prohibit the permittee from setting goals that can be recorded in a manner that is useful to the MS4.

Comment 190. If the permittee does not discharge POCs beyond those that are naturally present, it would seem that the MEP objective is being met and that no further action is required. Please incorporate a statement to this effect. (65)

Response. That is true for existing activities. The permittee still needs to design and implement its SWMP for any future activities to ensure that pollutant discharges are reduced to the maximum extent practicable.

Laws

Comment 191: Is the town attorney the same as an MS4 attorney and not a specialized area of practice. (31)

Response. Yes, that is correct.

Comment 192. There are a lot of permit requirements specifically addressed in MCM 4 & 5. Why are they mentioned in the permit if they are in the law? (26)

Response. The permit requirements and the model law are intended to compliment each other. If the permittee adopts the law or an equivalent law, they would comply with the permit requirement to adopt a legal mechanism.

Comment 193. The laws are going to need to be changed to add in new requirements, like the SWPPP acceptance form. (44)

Response. Local laws that are equivalent to any of the department’s model laws are accepted as complying with MS4 permit requirements. The SWPPP acceptance form should not require new

or modified laws. Nonetheless, there are requirements in the existing model law that the MS4 may wish to modify to be consistent with the renewed construction permit. For example, the model law requires construction site owner/operators to have a qualified inspector perform a self-site inspection every seven days and after a half inch of rain. The renewed construction permit requires such inspections every seven days, but not after a half inch of rain. It would be in compliance with the MS4 permit for the MS4 to modify its law to require qualified inspector inspections every seven days, without the requirement for an inspection after a half inch of rain.

Comment 194. The permit requires regulatory mechanisms to be equivalent to model laws. In a home rule state, municipalities should be granted greater flexibility in developing mechanisms for implementing and enforcing their programs. The State should allow the municipalities to develop their own regulatory approach; and not tell the municipalities how to implement their SWMP and what must be in it. Additionally, the proof for “equivalency” is burdensome and expensive. (13, 37)

Response. The goal of the permit requirements is to balance a level of consistency that allows stormwater practitioners to have a common understanding of requirements and a minimum level of protection, with a process that provides for local innovations in implementation. ‘Equivalency’ is allowed to provide for local innovation. To address concerns about the burden of demonstrating equivalency, the permit allows the municipal attorney to certify equivalence.

A. Traditional Land Use Control MS4 Minimum Control Measures (MCMs) (Page)

1. Public Education / Outreach

Comment 195. Local municipalities could help disseminate information, but education and training should be performed at the County, regional and state level using the assistance of groups like CCE and Soil and Water Conservation Districts. Especially for developing educational materials and conducting training. Goals should be set by the State and measured by professional polling. (22, 28, 44, 49, 57, 58)

Response. Public education and outreach can be achieved more efficiently on a larger scale. There is nothing in this permit that prohibits permittees from creating a larger scale program. At this point in time, many wonderful educational materials developed and available for larger scale campaigns. Many of those materials are available at:

<http://www.epa.gov/nps/toolbox/>

and

<http://cfpub1.epa.gov/npdes/stormwatermonth.cfm>

Additionally, many MS4 coalitions are willing to share their education and outreach materials with other permittees. It is up to the permittees to tailor the goals of their program to their municipality.

Comment 196. DEC should try to get stormwater onto school curricula. (44)

Response: Comment noted. The department does support a program, Water Education for Teachers, that allows for stormwater issues to be part of school programs.

a. Identify POCs...

Comment 197. What obligation does a permittee have to determine pollutants of concern (POCs) if they don't discharge to a 303(d) or TMDL (from pg 3 on fact sheet)? (31)

Response. If water bodies within a permittee's jurisdiction are not on the 303(d) list or TMDL list, the permittee should address the primary POCs, but they do not necessarily have to put emphasis on any pollutant in particular because there is no documented impairment. The permittee can also utilize the broader Priority Waterbodies List available at:

<http://www.dec.ny.gov/chemical/23846.html>

The permittee may also take into account the character of their municipality and determine if the potential exists for increased discharge of a specific POC. For example, a municipality with a lot of development may chose to emphasize silt and sediment in their SWMP.

Comment 198. How does a permittee determine POCs if they don't have receiving waters on the 303(d)? (25)

Response. See response to comment 197.

Comment 199. If the goal is to link public education and outreach to pollutants of concern (POCs) on the 303(d) list, that should be stated as such in this requirement. (67)

Response. Although addressing POCs for impaired waters is a core permit requirement, the permittee should also consider addressing other waterbodies of concern (e.g. those on the priority waterbodies list or waterbodies of local significance).

Comment 200. The stated requirement should be clearer and less onerous for municipalities. Necessary chemical testing could be problematic, fraught with quality control and assurance issues related to water chemistry testing. If the intent is to have permittees analyze land use, aerial images, etc to formulate likely generic POCs, that should be stated as such. It appears that this requirements would be beyond the ability of virtually all MS4s. The DEC should maintain the 303(d) and TMDL list. (63, 66)

Response: The requirement to identify POCs can be satisfied by consulting the department's priority waterbodies list.

b. Develop and implement...

c. Develop, record, ...

Comment 201. It is difficult to assess a program's effectiveness, it's not like you can just collect water quality samples to determine how effective an education / outreach program is. Surveys are too expensive and it's not likely that there will be a direct correlation or causation of water quality that can be linked to the number of brochures distributed. (44)

Response: See response to comment 152.

e. Program Implementation...

i. list education/outreach...

Comment 202. Estimating the number of people at a community event is too subjective. At a meeting or seminar, it is easier to get an accurate number. (19)

Response. Comment noted. The final permit has been modified to make clear the listed metrics are examples, not requirements.

ii. permittees performing....

Comment 203. Where should coalitions report their activities, just with the MCM the reporting relates to or also with MCM1. Or, just report in MCM 1 and not with MCM 3. (19)

Response: This information can be reported where it fits best, based on who is doing the education and outreach. If a coalition is relying on another agency, such as Cornell Cooperative Extension, to do all of the education and outreach activities for the permittees, the coalition could have Cornell Cooperative Extension report all of the information about education and outreach with MCM1, and not put the information with MCM3. However, if the coalition prefers to report on the education and outreach information with each specific MCM, they can do that. Or, they could report the information in both places. Where the information is reported is up to the discretion of the permittee or coalition.

Comment 204. Will the Department require or provide via the form the numbers of attendees to training and education events? If so, what info would have to be provided? If there is a web-based training, or web based documentation system this could be easily submitted to the Department. Clarify to include the specific information that will be asked for regarding trainings and limit the information requested to topic, date, number of attendees, and target audience for the group trainings. Specific individual trainings like engineering or “Professional Development” courses, where only one or two attend and the title/position of attendees would clarify the reason for the training. (66)

Response. The number of employees attending a training and the name or type of training would be sufficient. The permittees are responsible for ensuring that their employees receive the necessary training and should have a record of any training courses taken by each employee on file.

2. Public Involvement / Participation

Comment 205. Public involvement and participation is best achieved at the county and regional level through involving watershed groups, sportsmen groups, outdoor sports groups and environmental groups. Goals should be set at the county level and measured by attendance at presentations and involvement in clean-up activities. (22, 28)

Response. Permittees can set up their program on a regional level by forming a group or coalition of permittees that chose to work together. Part IV.F of this permit encourages permittees to work together at an inter-municipal or regional level.

b. Develop and Implement

Comment 206. Include somewhere: “provide the opportunity for the public to participate in the development, implementation, and review of the SWMP.” It is in part VIII on Page 41. (42)

Response. The requirement for the non-traditional MS4s and non-land use control MS4s was consolidated because the nature of their public does not facilitate such meetings and opportunities for public input. This permit requirement for traditional MS4s is more detailed, but still provides for public participation.

Comment 207: Another example is to post construction stormwater permits at work sites to educate residents about heightened water quality requirements in their area. (7)

Response. GP-0-08-001 covers posting requirements for construction sites.

Comment 208. The permit needs to include guidance on how to document the public involvement efforts of the monitoring, educational, and improvement activities being undertaken by groups like Soil and Water Conservation Districts (SWCD), Cornell Cooperative Extension, scouts, watershed organizations, etc., because their work goes a long way toward protecting water quality. What credit will be given to activities happening within the community by volunteer groups? (44)

Response. The permittee should document in their annual report the activities performed by volunteer organizations. The permit is not the appropriate location to provide guidance on how to document those efforts. The annual report provides an area for the permittee to describe the type of volunteer services provided and the organization they are provided by (describe in the area for “Describe activities that the MS4 has/will undertake to provide program access to interested individuals and to gather needed input.”)

d. Annual report presentation.

Comment 209. There is the possibility that a supervisor could sign off saying that they had a public meeting, when none was had. Plus, not everyone uses the internet and don’t log on in a timely manner. Internet notifications have not had as much success in response as paper. (35)

Response: The intent of this is to provide MS4 with more options to involve the public in review and commenting on program related documents. This language was added to provide the report in a venue that was more available to the public (ie. it is easier for an interested individual to look at the report on line versus trying to make it to a public meeting where they don’t know what time or point in the meeting the report will be presented). Permittees may still put up paper notifications about report availability at places where the public may see them and provide a paper copy of the report for public review if they feel it will increase public input.

i. prior to submitting...

Comment 210. The provision currently allows for the request of 2 or more to get a meeting. This should be increased to 10. (18)

Response. Comment noted. Where public interest exists for a public meeting, the department does not want to stifle that interest. The final permit retains the requirement for a public meeting if 2 or more people request such a meeting.

e. Develop, record periodically...

Comment 211. MS4's have experienced significant difficulty in assessing the goals for this; it is not financially feasible to do public opinion surveys. (44)

Response: Although surveys are a very good indicator and have demonstrated successful public involvement in other states, it is not a explicit permit requirement to do public opinion surveys to assess the goals for this MCM. The assessment should be based on the BMPs selected for this MCM, such as number of individuals participating in stream clean ups. If the permittee continues to get the public participating in clean ups, that could be viewed as a success.

3. IDDE

b. Develop and maintain a map...

Comment 212. What is the time frame to get items ii and iii done? Is it an additional 5 years? (19)

Response: The final permit allows until March 9, 2010 to determine preliminary storm sewersheds. The final permit allows for storm sewer mapping (outside of watershed improvement strategy areas) to be completed as grant funds are authorized for such mapping.

ii. the preliminary boundaries of the permittees

Comment 213. If the preliminary storm sewershed boundaries extend beyond a permittee's boundaries, what is the responsibility of the permittee? (56)

Response. The permittee is only required to map areas within their boundaries. However, permittees are responsible for anything that drains through their system.

The permittee's responsibility is to detect and eliminate illicit discharges that connect to their systems, with or without mapping a sewershed boundary. Having the preliminary boundaries of the system allows MS4s to track the illicit discharges more easily. If the sewershed boundary extends to another municipality, MS4s need to establish define protocols and procedures for responding to illicit discharges through inter-municipal connections.

Comment 214. What is meant by "preliminary boundaries of the permittee's storm sewersheds". The coalition objects to this, with all of the outfalls and associated sewersheds to properly locate, without funding, this would be too great of a financial burden. Definitely see advantage when need to track down an illicit discharge, but don't require for all without the discharge. Need a clear definition of what preliminary would be. In more rural areas,

could get some ideas by overlaying watershed boundaries. In more urban areas, tougher to do because don't necessarily follow topography. (19, 25, 42)

Response. The sewershed boundaries do not have to be associated with each outfall. Topographic maps provide a general idea of the flow direction. Identification of the limits of each sub-catchment provides a preliminary outline of the drainage area associated with an outfall or group of outfalls. Where mapping of such areas is available, areas served by sanitary or combined sewers would be removed from the area consider part of the storm sewershed. When more specific information is available, the drainage area related to each outfall may be identified and documented. In the absence of such information, a sewershed map enables municipalities to divide up the limits of contributing area to much smaller units and detect the problems more efficiently as cases arise. The preliminary storm sewershed map will also be the place where more accurate information can be documented as it becomes available. Some useful instructions on identifying storm sewersheds is included as Appendix E.

Comment 215. How useful is it to know preliminary stormsewersheds. Preliminary mapping without an understanding of the collection system has very limited use. (44)

Response. The most immediate benefit of a storm sewershed boundary is to establish a base onto which more useful information can be added. The preliminary delineation shows the boundary upstream from the pipe without detailed piping information. More details such as sub-catchments, underground pipe network, inlets, and catch basins may be documented as information is collected and verified in the field.

Sewershed boundary mapping shows the limits of the system, makes the detection job easier, shows contributing areas from outside of regulated areas and help reduce the workload for a single municipality with inter-municipal discharge.

Comment 216. While GIS based software can do the sewershed delineation, LIDAR data or higher resolution digital elevation model (DEM) data with a set elevation interval are needed. Many areas in NY don't have that data needed to do the mapping and would not accurately depict small topographic features, like roads, ditches, and swales. (22, 66)

Response. While a high resolution DEM data may be helpful in more detailed mapping of the surficial elevation changes, it is not essential for preliminary sewershed mapping. In addition, more accurate mapping of sewershed (not an existing permit requirement) primarily relies on survey data and field verification of underground infrastructures. Information at this level becomes available as municipalities perform field verifications and illicit discharge detection. The evaluation should also considered the draft sub-watersheds the department distributed on its IDDE information CD.

iii. the permittee's storm sewer system...

Comment 217. This could not be accomplished without major funding from the state or federal agencies.(19, 28, 49, 58, 66)

Response. Preliminary mapping of sewersheds is not intended to involve major expenditures. This map can be derived from readily available information and allow for field verification over time by simple detection methods. The preliminary map does not involve infrastructure/system

mapping.

Comment 218. A more cost effective approach would be to require system mapping in areas where suspected chronic illicit discharges have been identified. (28, 49)

Response. System mapping in the areas subject to the illicit discharges is a response that cannot be lightly dismissed for permittees with chronic illicit discharges.

Comment 219. What criteria will be applied in determining the “economic feasibility” of a system mapping project? (66)

Response. The final permit clarifies that this requirement only applies when grant funds are made available for sewer lines surveyed during an illicit discharge trackdown.

Comment 220. What is perceived value of doing this? If permittees have their IDDE law, and when doing dry weather surveys detect an illicit discharge, the duty to investigate and gather system information already exists. (66)

Response. The value of a mapped system is well accepted in illicit discharge trackdown.

d. Conduct dry weather surveys...

Comment 221. It is generally a waste of time to require dry weather surveys at inter-municipal “outfalls”. (22)

Response. With exception of culverts with only one inlet and one outlet (which should not require oversight), inter-municipal outfalls should be prioritized the same way other outfalls are prioritized.

Comment 222. “dry weather surveys” are vague, what are they looking for? (25)

Response: To provide clarification and use a terminology consistent with EPA guidance, the final permit refers to outfall reconnaissance inventory rather than dry weather flow. Outfall reconnaissance inventories are described in the EPA document entitled “Illicit Discharge Detection and Elimination, A Guidance Manual for Program Development and Technical Assessments”.

Comment 223. Some consideration should be given to MS4s with 4,000 outfalls, 25% a year is way too many, an additional full-time staff person would be needed to do this. Perhaps wording allowing larger municipalities to prioritize their survey work, based on criteria established within the permit, the allowing a smaller percentage of outfalls to be monitored within a permit cycle. Priority outfalls might be those within critical watersheds defined by stream classifications within the watershed, depth to bedrock, likelihood of soil erosion due to soil type, topography and the number of construction permits in an area. (63, 66)

Response. To use a terminology consistent with EPA guidance, the final permit refers to outfall reconnaissance inventory rather than dry weather flow. Notwithstanding the change in terminology, the requirement to address approximately 20 % of the outfalls per year (all outfalls over a five year period) is the minimum necessary to consistently detect illicit discharges.

Major outfalls are good indicators and critical check points and should be inspected more frequently. Note this is not solely to detect illicit discharges from construction. Other land uses such as hotspots are more likely to result in illicit discharges. Logically, the program needs to distribute the workload to effective seasons not only for practicality, but also because illicit discharge can be an ongoing activity and detection should not be limited to one period of time in the permit cycle.

e. Map new outfalls...

Comment 224. Does this only apply to outfalls from the MS4 to receiving waters or does it also apply to outfalls to the MS4 (foundation drains, new storm sewers, etc). (25)

Response. All new or newly discovered infrastructure must be mapped.

f. Prohibit, through a law...

Comment 225. When and how often does the attorney certification get filed? Where and to who is it filed? Who is the MS4 attorney, a county attorney or individual permittee attorneys (in our coalition a shared attorney has done 3/4 of the work)? Is there a model certification form? (19)

Response. The attorney certification is intended to be part of the Stormwater Management Program Plan, not something that is routinely submitted to the department. A shared attorney may make the certification. The certification is intended to be a letter; there is no certification form.

Comment 226. Where it reads “small MS4 attorney”, change to “attorney representing the MS4” for the sake of clarity. (63)

Response. The requested change has been made in the final permit.

i. Address the categories...

Comment 227. This portion of the permit suggests that some of the discharges listed as “Authorized Discharges” may need to be regulated “as necessary”. Better guidance is required in the permit when this additional regulation becomes necessary. (44)

Response: If any of the “Authorized Discharges” are found to be a non-negligible source of pollution, those discharges will be required to be prevented, detected and eliminated. See also response to comment 11.

Required SWMP Reporting

i. Program Implementation..

iii. percent of outfalls survey

Comment 228. Permittees should be allowed to comply with this at their own discretion and not be subjected to regulatory auditors that could require 20% a year. (18)

Response. There needs to be an objective indication of progress. If all detection and elimination activities are postponed to the end of the cycle, it means that this component of the program is not being implemented and illicit discharges will continue to flow through the system. This must be

treated as a permanent program that is practiced routinely. See response to comment 223.

Comment 229. Larger MS4s (>100 outfalls) should only have to do 10% of outfalls a year. Smaller do 20%. In large towns 20% per year could be 1000 outfalls, too much for their one staff person to do. They couldn't do anything else. It would be better to require less, but for outfalls with discharges of POCs, they be inspected annually until the discharge ceases. (31)

Response. See the response to comment 223.

v. activities to and ...

Comment 230. “and results from informing” is repeated twice. (18)

Response. The recommended change was made to the final permit.

4. Construction

Comment 231. SWPPP Reviews before NOI submission will be beyond the expertise of many permittees. (4, 7)

Response: During the five year permit term for GP-02-02, permittees were required to develop procedures for SWPPP review. Those procedures are required to be implemented by January 9, 2008. Permittees that cannot do SWPPP reviews are technically in violation of GP-02-02. Permittees need to have someone on staff or utilize the services of an individual (SWCD staff or town designated engineer to do reviews on behalf of the permittee) with an adequate knowledge base to do the reviews.

Comment 232. Permittees should not have to review disturbances greater than 5 acres. There is too much risk for erosion and sediment loss to local water resources. The MS4 permit does not provide permittees with any guidance as to when a 5 acre waiver is acceptable. DEC should at a minimum provide checklists or typical conditions for granting such a waiver. (60)

Response. The final renewed construction permit provides some criteria. Concentrating erosion and sediment controls on high erosion risk areas is another rule of thumb for such sites.

a. Develop, implement...

i. provides equivalent ...

Comment 233. The relationship between the construction permit (GP-0-08-001) and this permit is unclear. They should be equal. (7)

Response. The requirements of GP-0-08-001 were integrated into MCM 4 & 5 of GP-0-08-002. When the permittee's construction and post-construction programs comply with the requirements of those MCMs, the programs will be equivalent to GP-0-08-002. The permits were compared for consistency before finalizing them.

Comment 234. Clarify what would accomplish a program that provides equivalent

protection to construction permit. Is it wrong to assume that the adoption and enforcement of the Sample Local Law for Stormwater Management and Erosion & Sediment Control would accomplish this? (26)

Response: Adoption and implementation of the Sample Local Law for Stormwater Management and Erosion & Sediment Control would accomplish equivalent protection to the construction permit, provided any provisions in the law remain equivalent. The permittee may wish to evaluate local laws to be more in line with the renewed construction permit.

iii. includes a law, ordinance or ...

Comment 235. The maximum penalties in the Sample Local Law for Stormwater Management and Erosion & Sediment Control are low, not enough to stop problems. (7)

Response. Penalties alone are never considered the only tools to achieve compliance. Compliance activities encompass a broad range of preventative (education and outreach) and responsive (the department has had success with stop work orders) activities. The local MS4 must use the tools available to them to attain compliance with construction stormwater requirements. In circumstances where the MS4 has exceptional difficulty eliciting compliance, the department may also pursue enforcement against the operator.

Comment 236. In adopting the Sample Local Law for Stormwater Management and Erosion & Sediment Control with non-substantive changes, is certification required? (19)

Response. A certification would be required, but would not be expected to be resource intensive.

Comment 237. Remove attorney certification requirement. (40)

Response. The attorney certification requirement is an alternative to GAP analysis. Attorney certification cannot be removed because it would limit the ability of permittees to create a law that was unique to their municipality, while ensuring that it was still equivalent with the Sample Local Law for Stormwater Management and Erosion & Sediment Control.

vi. contains requirements for construction....

Comment 238. Shouldn't this requirement be addressed in the Sample Local Law for Stormwater Management and Erosion & Sediment Control? Why is it singled out in the permit as a separate requirement? (26)

Response: Many of the clauses in the Sample Local Law for Stormwater Management and Erosion & Sediment Control are individual requirements within GP-0-08-002. By adopting the Sample Local Law for Stormwater Management and Erosion & Sediment Control, and developing and implementing the programs needed to enforce that law, permittees would have MCM 4 & 5 programs equivalent to GP-0-08-001.

Comment 239. Current guidance provides little help as to what the standards are that should be used for the control of construction site waste. DEC should give guidance to holders of construction permits and to MS4s implementing SWMPs. (44)

Response. EPA has a BMP fact sheet for controlling construction site waste at:

vii. describes procedures for SWPPP review...

Comment 240. DEC should continue to oversee all aspects of construction stormwater. (34)

Response: EPA intends for local municipalities to be the lead in construction oversight because they are already involved with project review and approvals at the local level, are aware of local problems/concerns related to water quality and of local water resources that are in need of special protection.

Comment 241. Instead of having permittees execute the SPDES program, delegate responsibility to SWCD, they already have the resources, staff, and training to do the work. (34)

Response: The permittees may enter into agreements with the SWCD to have them do the work they are qualified to do for the stormwater program. An example agreement with a SWCD has been provided in Appendix C.

Sub-bullet 1: ensure that individuals...

Comment 242. Define “adequately trained” for permittee staff doing SWPPP reviews. “Adequately” trained for should include being a licensed PE, an individual trained by DEC, SWCD, CPESC or DEC endorsed entity in stormwater management and erosion and sediment control. (7, 21)

Response. Adequately trained, as defined in the draft permit, is appropriate.

Comment 243. If permittees outsource SWPPP reviews, the permittee needs to ensure that the reviewing engineer that signs the SWPPP acceptance form is duly trained by DEC, SWCD, CPESC or DEC endorsed entity. (21)

Response. Training for professional engineers is highly recommended, but is not a permit requirement at this time. See also comment 244.

Comment 244. The DEC should require additional training for individuals reviewing SWPPPs to ensure consistency. Statewide standards should be used. (24, 34, 60)

Response (includes response to 242 and 243 as well). The draft MS4 permit that requires a “Qualified Professional” to review SWPPPs that include post-construction stormwater management practices. Qualified professionals would be adequately trained. 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. While there would certainly be others who would be considered adequately trained to review erosion and sediment controls, Certified Professionals in Erosion and Sediment Control (CPESC) would be clearly adequately trained to perform such reviews. Additional training sessions are available that cover DEC program requirements.

Sub-bullet 2: all SWPPPS must.....

Comment 245. This is reviewed by the permittees, right? Isn't that already in the law? (25)
Response. Yes, the permittees are required to review the SWPPPs. The language is in the permit because it is a requirement and it is included in the local law because the permittees need the authority to review or ensure the SWPPPs are reviewed in order to comply with the permit.

Comment 246. The MS4s should not be expected to review disturbances greater than 5 acres. If they need to still review, per the construction permit, the two permits need to be cross referenced; the conditions for granting a 5 acre waiver should be included in the MS4 permit; consultation with Regional DEC Staff or engineer should be a condition before issuance of the waiver. (66)

Response. See response to comment 232.

Sub-bullet 3: after review.....

Comment 247: Who can sign the SWPPP acceptance form? (19)

Response. The principle executive officer or ranking elected official from the MS4, or a duly authorized representative of the person.

Comment 248. The only certification that should be required is that of the SWPPP preparer to certify that the SWPPP conforms to or is equivalent to the State's standards. (66)

Response. Comment noted. The SWPPP preparer's certification is an assurance of an acceptable SWPPP, but should not be taken as the only assurance. A local reviewer is considered a secondary assurance of SWPPP effectiveness.

Comment 249: Municipal attorneys should have the ability to review the acceptance form to ensure there are no liability issues for the municipalities. Parameters should be set limiting the liability of the municipality and requiring developers to comply with the approved SWPPP and NY Standards as a condition of acceptance. Concern that this form transfers liability for site failures to the MS4s. (28, 49, 57, 58, 60, 63, 66, 67)

Response. The SWPPP acceptance form is available at:

<http://www.dec.ny.gov/chemical/8468.html>

Comment 250. This commentor proposes some extra language they would like added to indicate the SWPPP revisions may be needed during higher than anticipated groundwater or an over abundance of rain events; and that the changes to the SWPPP be coordinated with the MS4. (31)

Response. SWPPPs are considered dynamic as they relate to erosion and sediment controls. SWPPPs should not require review for changes to erosion and sediment controls that have been made to respond to changing meteorological and geological conditions. Conditions that do require that plans and authorizations undergo additional review are increases in areas of disturbance and changes to post construction design parameters or practices.

Comment 251. Does “acceptance” mean approval or application is deemed complete and ok for submittal to the state? Does acceptance mean that the MS4 has accepted liability for the project? Acceptance or certification should not be used. It should be sufficient for the MS4 to provide DEC with a statement that the MS4 reviewed the SWPPP and it utilizes DEC’s technical standards. The owner/operator or SWPPP preparer should provide the certification. Suggest naming the form a “SWPPP Completeness Form”. (33, 60, 63, 66)

Response. Acceptance means that it is deemed complete and in accordance with local rules and requirements. The acceptance form is not a means of shifting liability from the construction site operator to the MS4. Acceptance is the proper term.

Comment 252. It is difficult to comment on this as no example has been provided. (44)

Response. See response to comment 249.

Comment 253. There is a concern that developers / consultants will push the municipalities to accept plans. (44)

Response. Comment noted.

Comment 254. There is concern that the State is washing their hands of the construction program and that municipalities no longer have the State back up of their final review / approval of plans. The DEC should still be a “backstop” to review non-conforming designs. Additional concern that if there is a law suit for failures that the Department can shield itself from the suit because they’ve received this form. (44, 60, 66)

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 will still be required to gain permit coverage under GP-0-08-001. 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. In addition, the Department will continue to support MS4s in the review and oversight process.

Comment 255. There is concern that distributors of proprietary products will try to buy their way into municipalities through political contributions and / or political pressure and municipalities will eventually approve the use of such products due to political pressure or perceived pressure, conflicts, etc. (44)

Response. As well as supporting MS4s in the review and oversight process, the Department will also be auditing MS4 reviews of construction sites. If ineffective, unsubstantiated proprietary products are approved, those approvals will be considered in violation of the MS4 permit.

Comment 256. If this SWPPP acceptance stays in the permit, the DEC should consider modifying the design manual to include specific guidance on situation where non-conforming designs and technologies could be considered (ie, if a portion of a site is too steep to accommodate conventional BMP, a hydrodynamic separator may be considered, and possibly adding an acreage limit for the practice). They should also include non-conforming technologies and designs that are commonly proposed and approved by DEC

(44).

Response. The department will support the local review process. In addition, if the Non-conforming technologies are truly effective, they may have a place in the department's technical standards.

Comment 257. If this SWPPP acceptance stays in the permit, the DEC should have better guidance on non-conforming technologies and DEC should maintain review authority for those plans. DEC should provide permittees guidance on conditions under which technical waivers are acceptable (44, 60).

Response. See response to comment 256.

Comment 258. If this SWPPP acceptance stays in the permit, permittees need more guidance on how to use the credits. It should not be the MS4s liability to incur for an untested DEC policy (44).

Response. The Credits document is still draft. The department is reviewing the options for how the credits document will be used.

Comment 259. There is a concern about shared liability on the part of the permittee, permittee staff or a third-party under contract with the permittee because signing the SWPPP acceptance form could be construed as issuing a performance guarantee (66).

Response. The purpose of the SWPPP acceptance form is only for the permittee to state that the SWPPP meets the standards within that permittee's jurisdiction. It is not a guarantee of the effectiveness or performance of the practices on any given construction site.

Comment 260. GP-0-08-001 says that the Department will withhold authorization under the construction permit if the MS4 does not submit an MS4 SWPPP Acceptance Form conflicts with the superceding law that says if a developer has met all applicable standards they should get coverage. There is case law and judicial case that says that regulations cannot violate superceding laws. (66)

Response. The requirement for a SWPPP acceptance form is an assurance that a developer has met all standards, it is not an new standard.

Comment 261. Requiring the SWPPP review / acceptance will add considerable cost and time to the review process. (66)

Response: The Department understands that some additional costs may be incurred by the permittees or construction site owner/operator for SWPPP review. However, the intention is for the SWPPP review to be concurrent with other reviews performed at the local level.

Comment 262. The department should consider allowing the permittees to transmit SWPPPs to DEC for additional assistance requests for review while the SWPPP is still technically in the permittees hands. That way the 60 day clock isn't a factor because the DEC would be helping the permittee with their review. (66)

Response. The department will be assisting permittees with their SWPPP reviews by answering technical questions and supporting training courses. However, the department will generally not

be providing courtesy reviews of SWPPPs as is suggested by this comment.

Comment 263. DEC, at the regional level, needs to develop a mutually agreed upon procedure, accessible to all, for documenting the location and status of permitted construction activity. Current latitudes and longitudes are often inaccurate, making the data unusable for GIS. In order for the MS4s to understand the cumulative effect of NPS pollution on water quality, they need to know the location of the construction projects in their jurisdiction, if they have accurate latitudes and longitudes. Location information that would help is: tax parcel ID number, at the time of SWPPP completeness form submittal and date; number of lots in the subdivision approval (if part of a common plan of development); name of future road; ask for specific X, Y coordinate data as follows : datum (NAD 83) and Coordinate System (State Plane US feet) (67).

Response. Along with the renewal of the construction stormwater permit, the department is revising the construction stormwater Notice of Intent. That revised NOI will address at least some of the issues brought forth by this comment, although there will always be data quality issues with submitted data.

ix. describe procedures for site inspections...

Comment 264. There is likely to be a shortage of contractor training sessions and anticipate a shortage of trained inspectors and contractors given the fact that there is no transition period. There should be a program like the Code Enforcement Officer training, where trained individuals carry cards to assist permittees in verifying that they are properly trained. (63, 66)

Response: Although, only about 170 contractors were trained by DEC in 2007, a transition period has been added to allow time for contractors to be trained.

Last year the Department recorded training to over 795 Code Enforcement Officers (that number may include some double counting CEOs trained more than once) in inspection procedures, as well as training significant numbers of code enforcement officers in previous years.

Sub-bullet 1: the permittee must ensure that...

Comment 265. Does the DEC expect the MS4 to take on liability if the site inspector is not adequately trained? How will DEC enforce this and what is the liability if inspectors are not adequately trained? Could the contractor potentially blame an inadequate inspection on a failure at their site. (26)

Response. Under this requirement, the MS4 is responsible for ensuring that their own site inspectors (not the construction site owner/operators self-site inspector) are adequately trained. The department has developed an MS4 compliance strategy that includes annual report reviews and audits of MS4s to determine compliance with the permit, as well as a process for escalating compliance activities for non-compliant MS4s.

Contractors have liability under the construction stormwater permit that is attached directly to the

construction stormwater permittee and cannot be shifted to the municipality.

Comment 266: Will DEC provide training and a list of what is approved training? (26)

Response. Since 2003, the department has maintained a stormwater training calendar on it's website. That calendar is available at:

<http://www.dec.ny.gov/chemical/8699.html>

Comment 267. How can an MS4 ensure the site inspector is adequately trained, what proof is needed? (26)

Response. The site inspector will be responsible for maintaining proof of credentials.

Comment 268. We recommend that DEC drop this requirement and make it the responsibility of the contractor / owner under the construction permit.(26)

Response. There is a requirement under the construction permit for contractors to be trained in erosion and sediment control.

x. educates construction site

Comment 269. This provision requires MS4 to educate construction site owner/operators. Need to make this match up with xi. below to only require informing of local requirements and procedures. (66)

Response. The provision does not require MS4s to educate construction site owner operators in anything but local procedures.

xi. ensures that construction site operators....

Comment 270. Will DEC provide training and a list of what is approved training? (26)

Response. Since 2003, the department has maintained a stormwater training calendar on it's website. That calendar is available at:

<http://www.dec.ny.gov/chemical/8699.html>

The website will list what training is approved.

Comment 271. How can a permittee ensure the operator is adequately trained, what proof is needed? What is adequate? (19, 26)

Response. It is up to the permittee to determine how an operator is adequately trained. The department expects that trained operators will receive credentials that the MS4 could require to be produced during inspections.

Comment 272. How does DEC plan to accomplish this with construction projects on property owned by the permittee that are under their jurisdiction? (19)

Response. The department could, likewise, require credentials to be produced during inspections.

Comment 273. How can this be a requirement if they state “may”? (26)

Response. This gives the permittees the permission to choose those or other options. The overall requirement of ensuring operators are trained must be met.

Comment 274. We recommend that DEC drop this requirement; it should have been included in the local laws, not as an individual requirement in the permit. (26)

Response. Contractors are usually on sites on a daily basis and are usually who must directly implement the SWPPP. They are the last line of protection against erosion on construction sites. Considering the pivotal role contractors play in protecting waters from the effects of site erosion, this requirement is necessary and appropriate.

Comment 275. We recommend getting contractor training information in the SWPPP certification statement? (34)

Response. That requirement is not necessary at this time.

Comment 276. Need state recognized training curriculum to avoid dissemination of incorrect information. (66)

Response. The state is developing that training curriculum and training based on that curriculum is expected to be available soon after the permit is renewed.

xi. establishes and maintains...

Comment 277. The xi’s are off by one. (26)

Response. The numbering has been corrected in the final permit.

Comment 278. If DEC is going to require this, they need to provide the MS4s with a model. (26)

Response. The MS4 can satisfy this requirement with a number of different tools, ranging from simple spreadsheets or databases, to one of the commercially available software products intended for total stormwater program management. In any case, a first step in obtaining an inventory of stormwater practices would be to review of the department’s database of practices for which the department received notices of intent.

xiii. develop, record, periodically assess...

Comment 279. How does the MS4 select the appropriate BMPs? References to relevant guidance documents should be provided. (7)

Response. The technology control aspects of this requirement is generally satisfied by meeting the other requirements of this section. However, MS4s that may include other effective BMPs not explicitly required by this section to assure maintenance of water quality standards.

b. Program Implementation reporting

iii. and iv.

Comment 280. Combine these reporting requirements into one item. (19)

Response. It is not appropriate to combine into one item, as they track different things.

Comment 281. How will the permittee get the number of operators trained? Is this the same training mentioned earlier that must be DEC approved. This needs to be clarified and DEC should provide the training info to the MS4s. (26)

Response. Because training is expected to be provided on a regional basis (generally County), this requirement has been removed from the final permit.

Comment 282. Remove the word “municipality’s”. Do the training on a regional basis, not for each individual MS4s. (44)

Response. The permittees are not required to do a specific training course. But, they do need to make contractors and others working in their jurisdiction aware of any specific requirements erosion and sediment control requirements within their jurisdiction. This can be as simple as giving any developer, engineer, etc that comes before the local approval board with a SWPPP a pamphlet that outlines the local requirements, or having a flyer in the building department for individuals to pick up when they are seeking information or having on their website.

v. percent of active construction sites inspected once:

Comment 283. Does active site mean active during the whole reporting year? Needs clarification. (26)

Response. All reporting is for the reporting period. Nonetheless, to make certain that is clear, the the final permit refers to construction sites active during the reporting year.

5. Post Construction Stormwater Management SWMP Development/Implementation

Comment 284. SWPPP Reviews before NOI submission will be beyond the expertise of many MS4s. (4, 7)

Response. During the five year permit term for GP-02-02, permittees were required to develop procedures for SWPPP review. Those procedures are required to be implemented by January 8, 2008. Permittees that cannot do SWPPP reviews are technically in violation of GP-02-02. Permittees need to have someone on staff or utilize the services of an individual with an adequate knowledge base (e.g. SWCD staff or town designated engineer) to do reviews on behalf of the permittee.

a. Develop, implement...

iii. includes a law,

Comment 285. The threshold for requiring the post-construction controls should be specified. Also, the controls themselves should be defined because they may or may not be equivalent to the structural / non-structural practices in iv. (7)

Response. The thresholds for requiring post construction controls are set by i.

iv. includes a combination of structural...

Comment 286. If non-structural practices are mentioned, they should be in the design manual. (13)

Response. Non-structural practices frequently are not always applicable at the design level. For example, reducing minimum road widths would be considered a non-structural practice. To provide an example of non-structural practices a checklist of possible revisions to local code structure is included as Appendix F.

Comment 287. Please clarify. Does this mean that permittees should require these types of practices to be installed? Isn't this already fulfilled by adopting the Sample Local Law for Stormwater Management and Erosion & Sediment Control? If so, why is it singled out as a permit requirement? (26)

Response. The structural measures would generally be satisfied by adopting the sample law. The permittee should also consider other specific structural practices if such practices are needed to address local issues. In addition, the permittee must consider non-structural practices (see response to comment 286).

v. describes procedures for....

Comment 288. Regarding SWPPP review by a “qualified professional” - the definition does not include Certified Professionals in Erosion and Sediment Control (CPESCs) or Certified Professionals in Stormwater Quality (CPSWQ). It should because it is more cost effective for permittees to use those individuals to do inspections and plan reviews. Additionally, if only engineers or landscape architects can do the reviews, permittees will not be able to use SWCD personnel to aid in reviews. (24)

Response. For review of most post construction control practices CPESC and CPSWQ are not adequate stand alone credentials, although they are good credentials when combined with professional engineer or licensed landscape architect. In cases where the stormwater management practice does not include engineering design, it would be appropriate to have non-engineers perform the review. In addition, in past permitting records over 60 % of projects require only basic plans, for which CPESC is a good stand alone credential for project review.

Comment 289. Municipal attorneys should have the ability to review the acceptance form to ensure there are no liability issues for the municipalities. (28)

Response. The SWPPP acceptance form is available at:

<http://www.dec.ny.gov/chemical/8468.html>

However, the form is not intended to insulated MS4s from the liability to ensure compliance with the MS4 permit.

vi. establishes and maintains...

Comment 290. This should only apply to practices within the permittee’s jurisdiction. They should not be responsible for inspecting facilities / practices outside of their jurisdiction that drain into their system. Additionally, when facilities are owned and operated by private

owners, the permittee cannot monitor the dates that maintenance was performed. The permittee can inspect them periodically to determine if they are being maintained. (14)
Response. Permittees should not be responsible for maintenance of stormwater management practices outside their jurisdiction. However, the permittee is required to maintain or ensure maintenance of stormwater management practices (including those owned and operated by private owners) that are within the urbanized or additionally designated areas, the permittee's jurisdiction, and tributary to the MS4.

vii. ensures adequate long-term operation....

Comment 291. Isn't this requirement fulfilled by the E&SC law? If so, why is it singled out? (26)

Response. Many of the clauses in the Sample Local Law for Stormwater Management and Erosion & Sediment Control are individual requirements within GP-0-08-002. By adopting the Sample Local Law for Stormwater Management and Erosion & Sediment Control, and developing and implementing the programs needed to enforce that law, permittees would have MCM 4 & 5 programs that comply with the basic technology control requirements of the permit.

Sub-bullet 1: the assesement and monitoring....

Comment 292. Measuring the depth of accumulated sediment is not well defined and may be burdensome to carry out. It should be made clear that this applies to only those facilities as defined in vi. What is the frequency and method for taking measurements? How would sediment contributions from an active construction site be differentiated from those that normally accumulate in the post construction practice? Would a municipality have to delay catch basin cleanouts in order to allow for such measurements? Would a municipality have to delay its street sweeping schedule to ensure that sediment leaving the construction site is not inadvertently swept up. Suggest that simply require that assessment and monitoring be consistent with the parameters set forth in the design manual. Clarify what will suffice for assessment and monitoring. January 9, 2008. (33)

Response. The final permit clarifies that the requirement in vii only applies to facilities identified in vi. As described in the sub-bullet, the maintenance information would be parameters identified in the NYS Stormwater Management Design Manual, the SWPPP, or the operation and maintenance manual for the practice. Measuring the dept of accumulated sediment was included as an example, but has been removed from the final permit.

Comment 292. Also, clarify what will suffice for assessment and monitoring. (33)

Response. See response to comment 292.

b. Develop, Implement....

d. Select appropriate...

Comment 293. How does the permittee select the appropriate BMPs? References to relevant guidance documents should be provided. (7)

Response. The BMPs are the items, tasks, activities, procedures, etc., the permittee develops and implements to comply with this minimum control measure. Provided they are, at a minimum, equivalent to the construction permit and comply with the regulatory mechanism, they would be considered appropriate.

Comment 294. Does this apply to new construction/redevelopment and/or pre-existing developed area? (42)

Response. The minimum permit requirements apply to all development and redevelopment projects installed since March 10, 2003.

6. Pollution Prevention/Good Housekeeping

Comment 295. What does “determine the operations actually in the urbanized area” mean?(15)

Response. It means that the permittees should determine the municipal operations that exist or are used within the urbanized area. For example, are there any parks, municipal buildings or highway garages in the urbanized area that need to be addressed by the PPGH program? Are there street sweeping or lawn and leaf pick up programs within the urbanized area that should be evaluated and updated if needed?

Comment 296. This section doesn’t specifically address “floatables”. They are a POC in the definitions, therefore housekeeping and records keeping requirements should be included. (62 EPA)

Response. Floatables are a pollutant of concern that is addressed by permit requirements.

Comment 297. DEC should address flood management projects and the procedures permittees will take to assess impacts on water quality of any existing projects being assessed for the incorporation of additional water quality protection devices or practices. (62 EPA)

Response. Flood control projects would be an additional municipal practice that exists but is not prevalent in New York State’s regulated MS4s. An ‘other’ has been added to the categories of municipal operations to accommodate less prevalent municipal operations or MS4s that wish to further sub-categorize their municipal operations.

a. Develop and implement...

i. Addresses municipal....

Comment 298. Hydrologic Habitat Modification (HHM) typically occurs down stream of MS4 systems. It is inappropriate to include it in the MS4 permit. Because it’s in-stream, it should be addressed through other programs. (13)

Response. HHM is not required and is not for every situation. It is, nonetheless, considered a beneficial alternative for stormwater management that is worthy of consideration under the MS4 permit.

Comment 299. Why are the additional PP/GH included? The coalition identified other municipal operations and facilities that DEC has identified (listed with comment) that are not in the list provided in the permit (check our guidance). Our coalition has already developed municipal operation plans for the ones in their list, not necessarily the ones in the permit. (19)

Response. The municipal operations listed in the permit are examples. Permittees can address any or all of the operations within their jurisdiction; they can be included in the list or other operations that may not be mentioned.

ii. includes the performance...

Comment 300. DEC needs to clarify how often permittees must perform a self assessment of all municipal operations. (26)

Response. The self assessment process is outlined in the Pollution Prevention / Good Housekeeping Assistance Document. It needs to address municipal operations that contribute or potentially contribute POCs to waters of the state. At a minimum, operations should be assessed every three years.

iv. prioritizes pollution prevention and....

Comment 301. Guidance is needed on this. What should they do to comply? Permittees will always put public safety (road clearing in winter) before water quality. (26)

Response. The intent is for permittees to prioritize where they should focus their efforts within the pollution prevention / good housekeeping program. Such as an area of town where there are trout streams or the streams are adjacent to a substantial amount of municipal facilities; where a few changes at a municipal operation would decrease the amount of pollutants transported by stormwater runoff, such as covering piles or not stockpiling materials near streams; facilities or operations where procedures or equipment need to be changed. The intent is not for municipalities to prioritize their work towards improving water quality over public safety.

vi. includes an employee pollution...

Comment 302. Education programs should be prepared at the state level and the municipalities be responsible for verifying that materials have been made available to all employees. Measurement could be made by simple tests for employees. (22)

Response. Comment noted. EPA has recommended some training programs for municipal employees. Several coalitions have purchased the training materials and used them for multiple MS4s within their coalitions.

viii. requires municipal operations...

Comment 303: MSGP - SWPPPs department should provide clarification as to which sections of the MSGP would apply to this measure of the MS4 permit and which do not. Part III of MSGP- Sections A-E apply, however, there are many sub-section requirements

that would not readily apply to Highway or Department of Pub Works facilities, like Deadlines for Preparation and Compliance (B); c.5 Sampling Data; F - documentation of permit eligibility related to endangered species, etc. Clarification is also needed about Section I. Comprehensive Site Compliance Evaluation. (66)

Response. Public highway garages are not required by federal rule to obtain an industrial stormwater authorization. The department may, at its discretion, require highway garages to obtain a permit to discharge. Also, see response to comment 359.

d. Program Implementation reporting...

Comment 304. The permittees should be required to report on the # of catch basins and post-construction practices cleaned / maintained. Permittees should also have to submit copies of facility assessments and prioritization plans along with their annual reports. (7)

Response. The permit does require reporting on the number of catch basins cleaned and post-construction practices cleaned/maintained. Normally DPW has a maintenance plan for catch basin cleaning and they are aware of their maintenance needs and location. The program is asking for a plan that shows a reasonable frequency of clean up based on the type of the structure and typical load and sediment accumulation in the infrastructure. An operation and maintenance plan for all stormwater control practices taken over by MS4 is a standard procedure and a post construction / house keeping requirement. Facility assessment is integrated in PP/Housekeeping requirement.

Comment 305. Other goals should be set by the State. The ones provided are a good start, but we should provide concrete goals, like a % of street miles to be swept. (22)

Response. The department is not prepared to include such requirements in the permit at this time.

Comment 306. The permittees currently do not track these quantities. This requirement would necessitate the development of new and time-consuming measuring and reporting systems. As an alternative, permittees should be allowed to report on improvements to their procedures, schedules, equip, frequency of inspections, etc. as tangible evidence of these efforts. (33)

Comment 307. This information is meaningless and most of these activities are regulated by other state and federal programs. The reporting requirements are redundant, a duplication of reporting and planning. What will NY use this information for. They shouldn't be required. (34, 40)

Comment 308. The permit should require data that reflects improvements to pollution prevention efforts as opposed to raw data. (42)

Response to 306, 307 and 308. One goal of revised reporting requirements is to allow for more objective reporting. The reporting requirements noted are intended to provide quantitative indicators of the quality of the MS4s pollution prevention and good housekeeping program.

Part VIII. MINIMUM CONTROL MEASURES - TRADITIONAL NON-LAND USE
CONTROL AND NON-TRADITIONAL.

Comment 309. Put MS4s on the end of the title. (48)

Response. The recommended change has been made in the final permit.

Comment 310. If the permittee does not discharge POCs beyond those that are naturally present, it would seem that the MEP objective is being met and that no further action is required. Please incorporate a statement to this effect. (65)

Response. Discharges at background concentrations and loading rates provides a good indicator of a program that requires a low level of incremental efforts. The permittee still must design and implement their SWMP to prevent future problems with POCs.

Comment 311. Make sure title in permit says “Part” (18)

Response. The recommended change has been made in the final permit.

Laws / Equivalent Mechanisms

Comment 312. There is concern that the evaluation of existing and creation of new policies, procedures, sanctions, etc. that need to be developed and approved will be a lengthy process, could take several years or more to complete. (10)

Response. The procedures need to be accomplished to comply with the existing permit, GP-02-02 to have a construction program that is equivalent to the construction program.

Comment 313. The written directive stating that updated mechanisms must be used and requiring the permittee attorney certify the directive and mechanisms appear to be cumbersome. The permit already requires permittees to use available mechanisms and then report in the annual report which has to meet the signatory requirements. Isn't that sufficient? (2, 18)

Response. The directive was included because it is believed that it would provide clear directions to the people responsible for using and complying with the mechanisms. The department agrees that the attorney certification for a directive (something that is not a law) is unnecessary.

The permittee attorney certification of procedures for construction sites has been removed from the final permit.

Comment 314. The requirements a duplication of the construction General Permit. (18)

Response. The permit requirements have been reviewed and provisions that are thought to truly duplicate the requirements of the construction General Permit have been removed.

Comment 315. The county (Erie/Niagara) cannot supply certification statements. (19)

Response. See response to comment 313.

A. Traditional Non-Land Use Control and Non-traditional MS4 Minimum Control Measures (MCMs)

Overall

Comment 316. Are non-traditional MS4s able to interpret / implement permit requirements according to BPJ where the requirements may not be practical to implement where written? (6)

Response. The department is not prepared to make this change at this time.

Comment 317. paragraph 4 - the public for transportation *permittees* - should be changed to “general public using or living along transportation systems” to better define the audience. (48)

Response. Comment noted and change made in the final permit.

1. Public Education and Outreach on
e. Select appropriate...

Comment 318. Asking a permittee to ensure that the “public” receiving educational information in turn does activities and leads to the reduction of the POCs is unreasonable. Furthermore, it is unclear if non-traditional MS4s should even be required to address MCM1. (65)

Response. The goal of this MCM is to provide educational materials and outreach to the public. If it is not practical for the permittee to do an assessment to determine if the public’s perception or actions have changed, the permittee needs to determine an appropriate way to assess if their program is sufficient to meet MEP.

2. Public Involvement/Participation...
d. Annual report presentation...
i. prior to submitting...

Comment 319. There is some duplicative language between the item and the bullet below. (2)

Response. Comment noted, language will not be changed, it is written as desired.

Comment 320. If a non-traditional MS4 provides the annual report on the internet and one person asks for a public meeting, must the MS4 grant their request. (6)

Response: To be analogous to the requirements for traditional MS4s, the final permit requires a public meeting if two or more people request a public meeting.

ii. traditional non-land use control MS4s must comply...

Comment 321. Why do only counties have to have a public meeting? (15)

Response. This was an oversight during permit drafting. The final permit has been changed to allow for posting on the internet. Notwithstanding the allowance for internet posting in lieu of a public meeting, 2 requests from interested parties for a public meeting would require that such a public meeting be held.

iii. non-traditional MS4s typically....

Comment 322. Also include that they may participate in a coalition (or similar organization) sponsored meeting in the event that any are part of a coalition. (18)

Response. This change has been made, but the non-traditional or traditional, non-land use control MS4s must make available information specific to their MS4 or provide the weblink to their annual report for review by the public.

3. IDDE

Comment 323. Mapping all interconnections in larger MS4s is not feasible, even when working together with adjacent MS4s. (1)

Response. Mapping interconnection may take more time to coordinate among involved municipalities. However, it is essential and worthwhile to establish the understanding and the responsibilities by inter-municipal agreement on those critical points for potential illicit discharge resolution. The exception to this requirement would be culverts with only one inlet and one outlet.

a. Develop, implement.....

Comment 324. This implies that the MS4 should police neighboring areas where it has no jurisdiction. It makes more sense to detect and eliminate illicit discharges *within and from* the MS4. (19)

Response. It means that MS4s document the drainage areas upstream from their storm systems and report if that area is not under their jurisdiction. By doing so they establish the records for notification of the responsible entity.

b. Develop and maintain....

Comment 324. What is the timeframe to get items ii and iii done? Is it an additional 5 years? (19)

Response. The final permit allows until 3/9/2010 to determine the preliminary storm sewersheds. The final permit allows for storm sewer mapping to be completed as funds are authorized for such mapping.

ii. the preliminary boundaries of the permittees.....

Comment 325. What is meant by “preliminary boundaries of the permittee’s storm sewersheds”. The WNY coalition objects to this, with all of the outfalls and associated sewersheds to properly locate, without funding, this would be too great of a financial burden. Definitely see advantage when need to track down an illicit discharge, but don’t require for all without the discharge. Need a clear definition of what preliminary would be. In more rural areas, could get some ideas by overlaying watershed boundaries. In more urban areas, tougher to do because don’t necessarily follow topo. Mapping the stormsewer system makes more sense than the preliminary storm sewer shed, but they are both huge tasks. (19)

Response. A preliminary storm sewershed map is considered the minimum necessary to

trackdown illicit discharges. See also responses to comments 212 to 217.

iii. the permittee's storm sewer system....

Comment 326. This could not be accomplished without major funding from the state or federal agencies. (19, 65)

Response. See response to comment 218.

Comment 327. Presentations by DEC Central Office staff at outreach meetings have not indicated this as a requirement and DEC staff has indicated in meetings with NYSDOT staff that this subdivision is the same as the previous subdivision, which pertains to the mapping of stormsewersheds. Clarify. (48)

Response. This requirement is different than storm sewershed mapping. To satisfy this requirement, permittees would have to map their pipes, catch basins and Stormwater Management Practices. Nonetheless, the requirement only applies where the mapping would be performed under a grant to perform system mapping or for areas where an illicit discharge has been detected and staff is already closely examining system components. In the absence of grant funding, a specific watershed requirement, or an illicit discharge trackdown, this requirement would not apply to NYSDOT.

Comment 328. Economically feasible should be defined. Or the subsection should be revised to simply state that mapping shall be completed when outside funding such as grants are received to cover the cost of such mapping. (65)

Response. The section has been revised in the final permit to more clearly state that grant funding or a section of sewer that is part of a trackdown, is the trigger for this requirement to perform system mapping.

Comment 329. System mapping could be redundant if design or as-builts of the system already exist. (65)

Response. Digitization of existing paper maps is one method of system mapping which is practiced by many Phase I and Phase II communities. With the presence of such maps, this may be the most cost effective way for developing system maps.

d. Conduct dry weather surveys...

Comment 330. Large MS4s (i.e. with 1,000s of outfalls) will have a difficult time doing dry weather surveys, even at 20% a year. They would prefer to allocate their limited staff time to maintaining BMPs. Additionally, in areas that are tidally influenced, dry weather surveys may not be as effective as in other areas because the outfalls will often be submerged or be draining sea water. Desired outcome: make a more targeted approach to dry weather flow Surveys. (1)

Response. Dry weather surveys are essential to detecting illicit discharges. MS4s have to be looking at the outfalls to see if there is an indication of illicit discharge into their system. Dry weather surveys of tidally influenced should be performed at low tide or up in the system in manholes beyond the tidal influence. See also response to comment 223.

Comment 331. how does this apply for a non-traditional MS4, since it could be argued that there are no “urbanized areas” within a school, hospital, etc. (6)

Response. A regulated non-traditional MS4 is, by definition, in an UA or additionally designated area. The first indicator that they are considered to be MS4 is having ownership over their storm sewer system. If they do, they would need to prevent illicit discharges to and from their system into the waters of US.

Comment 332. define “Dry weather surveys” (48)

Response. See response to comments 222 and 223.

f. Prohibit illicit discharges....

Comment 333. The legal assessments would be better performed by the DEC than the Municipal attorneys. DEC is more qualified to review and determine if the mechanisms adequately meet the requirements. (10)

Response. DEC has reviewed some of the laws and will likely review more laws.

Comment 334. There is a concern that the County Health Department has not been consulted to determine if the requirements of the model law are complimentary to or consistent with Health Dept. roles and responsibilities. (10)

Response. The model law was made available for public review and comment prior to being finalized. However, it would be desirable to coordinate with County Health Departments in development and implementation of any IDDE activities that may duplicate County Health Department activities. The department encourages establishment of cooperative agreements with other local agencies, County Health Departments included, in implementation of MS4 permit requirements.

ii. for non-traditional MS4s....

Comment 335. Why is “person authorized to sign NOI” specifically said? Is that different than the permittee? (6)

Response: This is to clarify and to ensure that officials are aware of the requirements and the policies will be followed by agencies.

Comment 336. Why does it say “permittee’s attorney”? (6)

Response. The intent is for the attorney to verify that the procedures are equivalent to the model law. The final permit has been changed to ‘attorney for the MS4’.

Comment 337. Mechanisms cannot be equivalent to model local law. How would this be demonstrated? Remove first statement and use language similar to page 46 regarding MCM 4. (19, 65)

Response. The requested change has been made in the final permit.

Comment 338. DEC should consider allowing signature by a duly authorized person and allow for automatic delegations with the signature authorization form previously submitted because for non-traditionals environmental directives of a similar nature are issued not by

the Principal Executive Officer, but by a delegated position with overall responsibility, like a VP or Director. (52)

Response. It would be acceptable if a person in one of those delegated positions with overall responsibility for environmental directives signs forms like the NOI. Individuals granted signatory authorization under the GP-02-02 will still have signatory authority under GP-0-08-002.

Comment 339. Only incongruent metrics are available for the equivalency assessment because the enforcement capability, operations, and directive audience are different, those difficult to have assessed by the MS4 attorney. (65)

Response. Comment noted. Refer to the response for comment 336.

Sub-bullet 4: the mechanisms and directives...

Comment 340. "...mechanisms must be equivalent to the...", delete second to the. (29)

Response. The correction was made in the final permit.

i. Program implementation

v. activities to and results

Comment 341. What is meant by results from informing the public? Shouldn't it say illicit not illegal discharges. (2)

Response. Results from informing the public are the results from any activities to inform or educate the public, such as the number of people that attended, the number of people that call in spills or illegal discharges after attending an outreach session. Either illicit or illegal is correct.

4. Construction Site Stormwater Runoff Control

Comment 342. Should non-trad, non-land use control MS4s also have to do a SWPPP acceptance form? (19)

Response. No.

a. Develop, implement...
iii. incorporates mechanisms....

Comment 343. The legal assessments would be better performed by the DEC than the permittee attorneys. DEC is more qualified to review and determine if the mechanisms adequately meet the requirements. (10)

Response. The self-certification process is considered to be more efficient than a protracted review process that may well delay program implementation.

Comment 332: sp. allowable. Fix (29)

Response. The requested change was made in the final permit.

Sub-bullet 3: a written directive....

Comment 344. Add, in addition to “property owned” something like “on easements” or “within the right-of-way” or “maintenance jurisdiction of the MS4”, since not all right-of-ways are owned outright by the highway depts. (29)

Response. The final permit has been revised to refer to property owned, under easement to, within the right-of-way of, or under the maintenance jurisdiction of the MS4.

Sub-bullet 4: the mechanisms and directive....

Comment 345. Strike one of the “to the”s (29)

Response. The suggested change is included in the final permit.

vii. ensures that construction site operators have received erosion and sediment...

Comment 346: What level of training are contractors required to obtain? (1)

Response. Four hours of erosion and sediment control training offered or approved by the department.

Comment 347. Is it sufficient for only the principles to be trained or do all employees need to be trained? What is the definition of construction site operator? Is it the supervisor, all workers? It could be an economic burden to train all workers. (1, 2)

Response. Each contractor must identify at least one individual (trained individual) from their company that will be responsible for implementation of their SWPPP. That individual must receive 4 hours of training within two 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 348. Require SWCDs to do the training to take the burden off of individual permittees. Who will do the training, is there a list of qualified entities that may do the training? (1, 2)

Response. Permittees are not intended to be required to do the training. The permit language says that training may be provided by the Soil and Water Conservation Districts, the Department, or other qualified entities.

Comment 349. What is the implication of this on existing projects? Is there some sort of compliance schedule or grace period to get into compliance? Will prior training count? (2)

Response. There will be a grace period until March 9, 2010.

viii. establishes and maintains an inventory...

Comment 350. An inventory of active permits is already maintained by the DEC. The DEC should make their GIS available for filtering and use by the MS4s. It should be clarified that this is only for sites that have obtained coverage under the construction permit. (65)

Response. The data will be made available to MS4s.

b. Program Implementation reporting

ii. regulatory mechanism and memo status

Comment 351. Clarify the meaning of “memo status”. This term is used many times throughout the permit. Add to definitions? (48)

Response. Memo status is whether the memo requiring staff to follow the new mechanisms and procedures is done, if it is draft form, or if it hasn't been done at all. The terminology 'memo status' has been changed in the final permit to clarify the requirement. See response to comment 355.

iv. percent of active construction sites with operators.....

Comment 352. This language should be clarified to indicate whether it refers to MS4 staff, contractors, or both for who shall report on the “percent of active construction sites with operators that have received E&SC training”. (48)

Response. This requirement has been dropped in the final permit.

5. Post-construction Stormwater Management

a. develop implement and enforce...

iii. incorporates enforceable...

Comment 353. The legal assessments would be better performed by the DEC than the Municipal attorneys. DEC is more qualified to review and determine if the mechanisms adequately meet the requirements. (10)

Response. see response to comment 331

Sub-bullet 4: the mechanisms and directives...

Comment 354. Strike one of the “to the”s (29)

Response. The suggested change has been made in the final permit.

e. Program implementation reporting

v. regulatory mechanism, equivalent mechanism....

Comment 355. What is meant by “memo status - certification” (2, 18).

Response. see response to comment 351. This language in the permit was clarified to indicate that the permittee needed to report on the status of the memo that says that staff need to follow the regulatory mechanisms and procedures. See response to comment 351.

6. Pollution Prevention/Good Housekeeping

Comment 356. The term municipal should be replaced with permittee throughout. (7)

Response. Comment noted.

a. Develop and Implement...

i. address municipal operations...

Comment 357. Why are the additional PP/GH included? They were in the last permit. The coalition identified other municipal operations and facilities that DEC has identified (listed with comment) that are not in the list provided in the permit. WCNY coalition has already developed municipal operations plans for the ones in their list, not necessarily the ones in the permit. (19)

Response. The municipal operations listed in the permit are examples. Permittees must address operations within their jurisdiction. The operations may be from the list or be other operations that are not listed. To make clear that other operations may be included, an ‘other’ category has been included in the final permit.

ii. include the performance of a self assessment...

Comment 358. If the MS4 does not meet all of the requirements in the guidance, are they violating the permit? (2)

Response. The language has been modified to refer to use of the guidance; it would not be a violation.

viii. requires municipal operations....

Comment 359. The Multi-sector General Permit (MSGP) has many requirements above the MS4 permit, including water sampling. Articulate the intent of this section, as well as what parts of the MSGP would be relevant for inclusion in the SWPPP. SWPPP should be replaced with SWMP. Smaller non-traditional SMWP’s may contain or be conducive to inclusion of all of the requirements of the SWPPP from the MSGP, this is redundant and only one SWMP/SWPPP should be required in these situations. (48, 52)

Response. If a facility is to be covered under the MS4 permit, such facilities will be covered by the SWMP and the portion of the SWMP plan related to the facility will be required to be prepared in accordance with Parts III. A, C, D, J, K, and L of the Multisector General Permit. The permittee will also be required to perform monitoring and record keeping in accordance with Part IV. of the MSGP and attach discharge monitoring reports to the annual report.

Comment 360. This requirement is inconsistent with the MSGP, which generally states that coverage under the MSGP may not be required if a municipally owned industrial activity is addressed as part of the MS4 permit and meets the 6 MCMs. Thus, the MSGP requirements (inspection, sampling and recordkeeping) should not be applicable to municipal operations covered by this permit. This subsection should be modified to require that “Good Housekeeping measures used to meet MCM 6 for municipal operations and facilities that would otherwise be subject to the NYS MSGP must be equivalent to the sector specific Good Housekeeping measures outlined in the MSGP.” (65)

Response. See response to 359.

d. Program implementation reporting....

Comment 361. The topics don't necessarily provide an accurate assessment as to the effectiveness of the SWMP. DOT already reports on many of the items for other programs, don't want to duplicatively report - ie pesticides / herbicides - pound applied are already reported per pesticide program requirements; oil/antifreeze = regulated by petroleum bulk storage; petroleum products disposal - solid waste regulations; spills - reported to the spills program to ensure proper cleanup. A reference to all related regulations should be sufficient without additional reporting. (48)

Response. Those reporting items are not included in the final permit.

Comment 362. The level of effort needed to track the minimum metrics cannot be justified given the limited value they provide. For example does removal of 10 tons of debris in year 1 and 3 tons in year 2 show success (less material reaching catch basing) or failure (less effort)? We recommend letting the permittee ID some metrics that are able to be most easily tracked within their current system that will provide DEC with insight into the effectiveness of the program. The minimum metrics shown could be used as examples, but should not be required. (65)

Response. See response number 361.

ii. describe, if not done so already...

Comment 363. Some of the items to be tracked, as listed in the permit, are of limited use and not a good use of limited resources (ie amount of debris cleaned per mile of street and / or sidewalk, acres of parking lots swept, pounds of P / N applied as fert). (19)

Response. See response number 361.

Part IX. ADDITIONAL MINIMUM CONTROL MEASURES - WATERSHEDS WITH IMPROVEMENT STRATEGIES

Comment 364. Is there a contact in each watershed to provide the required method of analysis. (43)

Response. There are not yet contacts identified for each watershed.

Comment 365: The deadline for assessment of January 8, 2013 is lengthy considering it's approximately 16 years after approval of the Phase 1 P TMDL for EOH.(7)

Response. Nonetheless, that time frame is considered appropriate for a statewide requirement.

Comment 366: Change this title and each section title from “additional MCMs” to “prescriptive BMPs” (42)

Response. The recommended change has been included in the final permit.

Comment 367: Clarify, is it only the part of the municipality that is in the TMDL watershed that is subject to the additional MCMs or the entire municipalities? (43)

Response. The map indicates where additional MCMs apply.

Comment 368. Tiered Watershed Requirements don't take into account local economic realities. (4, 21A)

Response. The requirements in the draft permit considered local watershed issues. In addition, modifications made in the final permit also consider local watershed issues.

Comment 369. TMDL requirements should not be in general permits. (21A, 70)

Response. In accordance with 750-1.21(e), the department may, at its discretion, require a permittee authorized in accordance with a general permit to obtain authorization under an individual permit.

Comment 370. How will DEC determine whether “further enhanced controls” are needed or what specific water quality indicators will be used to make this determination if the proposed measures in the permit are found to fall short in preventing and eliminating water quality excursions. (7)

Response. The need for further controls will be determined primarily from modeling results and from monitoring the water bodies, although other available information may be considered as well.

Comment 371. Put in an introductory sentence to make it clear which permittees this applies to (ie. Previously notified?). That way those not subject won't get confused. (18)

Response. There are likely to be permittees within the watersheds mapped in the permit that the department has not yet found. Listing the known permittees could be interpreted to exclude those, as yet undiscovered, permittees from the permit requirements.

Comment 372. Remove tiered approach. The requirements for non EOH watersheds should be developed taking into account local factors that must be properly and thoroughly

considered, on a case-by-case basis. This is important especially because the water quality of Onondaga Lake appears to be improving. It should not be assumed that there is a reasonable potential for local stormwater discharges to cause/contribute to violations of water quality. They are currently developing a water quality model and precipitation runoff model to study the impacts of stormwater discharges, among other things, which could be used to predict the lakes response to various lake and tributary improvements. (4, 21A) Response. The final permit allows the Onondaga watershed MS4s until 3/9/2011 to submit retrofit plans and does not include the septic inspection requirements.

Comment 373. When water quality goals for TMDLs are met, the permit should provide for expeditious discontinuance of enhanced requirements, to decrease cost to impacted communities. (21A)

Response. Such a discontinuance should be considered for retrofit requirements intended to reduce overall pollutant loadings. However, it should not be considered for application of the enhanced phosphorus removal standard, because that standard is to minimize the growth of overall pollutant loadings, not reduce existing loadings.

Comment 374. Retrofit Programs - include the requirement to develop and submit approvable plans and schedules. DEC must clarify that, in order to be “approvable” the plans and schedules need to include a commitment by the permittee to provide adequate project financing. (62 EPA)

Response. There is a requirement for the permittee to adequately fund the program. In addition, language has been added to the final permit requiring a listing of potential funding sources.

Comment 375. Septic system programs for all watersheds - State and County Health Departments and DEC all have responsibility to approve private and commercial septic tank designs and enforce failing septic systems. Permittees should be responsible for inspecting, repairing and/or replacing failing septic systems that are on municipally owned properties. However, making permittees responsible for monitoring on-site wastewater treatment systems tributary to their jurisdiction area as a condition of this permit is unreasonable. (65)

Response. Septic system programs are at the top of the list of functions that would be best implemented under an inter-municipal agreement with MS4 permittees for just the reasons noted in the comment. County Health and State Health Departments already play such an important role in oversight of septic systems in many counties. Those Health Department’s could be excellent partners to oversee some or all of the septic system inspections and oversight.

The inspection requirement is intended to prevent on-site system failures. The requirement does not apply to on-site systems outside of the permittee’s jurisdiction. It applies to the on-site wastewater treatment systems in the MS4 storm watershed, within the permittee’s jurisdiction (e.g. septic systems that fail or otherwise result in the wastewater reaching the separate storm sewer system within the urbanized or additionally designated area).

This requirement would not apply to a non-traditional MS4. The final permit clarifies what aspects of the watershed improvement strategies are required for traditional land use control

MS4s, what portions are required for traditional non-land use control MS4s and what portions are required for non-traditional MS4s. Non-traditional MS4s would not be required to complete this aspect of the program.

Comment 376. If the septic requirements stay, “tributary” requires clarification to avoid regulatory mandates that over extend MS4s jurisdictional reach. Rather, the program should address failing systems within their jurisdiction. This requirement should be eliminated for non-traditional MS4s and traditional non-land use control MS4s. Can’t amend existing contracts and leases to incorporate new enforcement mechanisms, but could work into new ones if needed to. (65)

Response. The requirements apply to systems within the urbanized or additionally designated area that are within the permittee’s jurisdiction and storm sewershed.

Comment 377. For all TMDL MCMs, there hasn’t been a differentiation between traditional, land use control MS4s and the traditional, non-land use control MS4s / non-traditional MS4s. Of particular concern are requirements that need development of regulatory authority where we don’t have the authority to do so. (65)

Response. By including an applicability section for each provision, the final permit clarifies what aspects of the watershed improvement strategies are required for traditional land use control MS4s, what portions are required for traditional non-land use control MS4s and what portions are required for non-traditional MS4s.

Comment 378. Pollutant loading problems - needs to be established, especially in relation to the retrofit programs. Where a permittee is a negligible contributor of the POC, it is unreasonable to require a retrofit program or to mandate participation in a watershed reduction program. (65)

Response. A permittee that is a negligible contributor of the POC would have a far reduced effort in preparing a retrofit program. That effort may only in demonstrating that the contribution is negligible.

A. East of Hudson Watershed MS4s - Additional Minimum Control Measures

Comment 379. Add New York City before EOH in the title. (48)

Response. The requested change has been included in the final permit.

Comment 380. DEC should make a specific implementation plan in each basin in the EOH then work with the MS4s to identify specific P reduction projects, oversee finalization, funding coordination and implementation. (7)

Response. The department is preparing an implementation plan for the East of Hudson New York City Watershed.

Comment 381. Emphasis should be placed on implementing practices with the highest P removal capability. There should be a numeric effluent limit for P. (12)

Response. The permit emphasizes implementation of practices with the highest P removal capability (IX.5.b.iii). The department is not prepared to establish numerical effluent limits with

this permit action.

See new website.<http://cfpub.epa.gov/npdes/stormwater/urbanbmp/bmptopic.cfm>

Comment 382. These permits contravene the 1997 MOA between DEP and DEC that said they would continue to identify, evaluate and develop potential management practices for controlling NPS, that if implemented would provide reasonable assurances that the NPS reductions would attain the load allocations. NPS management practices would be designed based on the types of land use in the relevant basin and any other reservoir-basin specific conditions. (20)

Response. The department is continuing to identify, evaluate and develop potential management practices for controlling non-point sources that, if implemented, would provide reasonable assurances the NPS reductions would attain load allocations.

Comment 383. The new permits are contrary to EPA's recommendations, that allow applicants to choose from different methods to calculate P reductions, but it is important that any estimates include as much site specific data as possible and the most conservative measures are utilized to reduce stormwater loadings. The BMP must be designed, built and maintained with an overall goal of no net increase in loadings over pre-existing construction conditions. (20)

Response. Site-specific data would generally be the most useful, it is also the most difficult to obtain because it requires years of intensive monitoring. That level of monitoring is generally not available for individual development projects. In the past, use of export coefficients were based on an average of available literature values.

Comment 384. There is no clear nexus between the reservoir TMDL and the effluent mean concentrations from Chapter 10 of the manual; therefore no clear means for enforcement. Need subwatershed P allocations for them to shoot for. (23)

Response. There are presently no sub-watershed allocations available for this watershed; such allocations would be part of a revised TMDL.

Comment 385. The way the permit is written, for the MS4s to achieve compliance, could be done, but it would not be consistent with the intent and spirit of the TMDL and state and federal regs. (23)

Response. The permits require compliance with the TMDL through implementation of additional Best Management Practices.

Comment 386. Local allocations must be reduced from their current levels prior to any development. So, it is unclear what the EMC starting point benefits are when considering the technical literature, Chapter 10, Phase 1 and 2 TMDL calcs, and additional measures in the permit. (23)

Response. Neither the current state design standards, nor the enhanced phosphorus removal standard, use land use loading factors or export coefficients for sizing or design of stormwater management practices. The enhanced removal standard uses the National Stormwater Quality Database to provide a basis for demonstrating the relationship between land use changes and

expected concentrations of total and dissolved phosphorus in runoff. Site-specific data is difficult to obtain because it requires years of intensive monitoring. That level of monitoring is not available for individual development projects. In the past, use of export coefficients were based on an average of available literature values.

Comment 387. There is inadequate time to develop the septic system and retrofit programs to comply. Need more time. (43)

Response. The deadline for development of a program for septic systems has been extended to March 9, 2011 in the final permit.

Comment 388. DEC should use the available information (TMDLs, TAC's report, and Draft TMDL Implementation Plan) to divide the load allocation amount MS4 permittees and non-point sources. The specified MS4 reductions could be included directly in the permit or in the TMDL implementation plan the DEC has committed to issue. (62 EPA)

Response. The Department will provide a TMDL implementation plan for the East of Hudson New York City Watershed in the near future.

1. Public Participation (EOH)

Comment 389. The NYCDEP Bureau of Water Supply, Quality & Protection should take the lead on the education and outreach for EOH communities, with the support and participation of the EOH communities. They have access to the financial resources and expertise to address the POC. (43)

Response. This alternative would be allowed by the permit, but is not an explicit permit requirement.

3. Illicit Discharge Detection and Elimination (EOH)

a. Develop and Maintain a Map....

Comment 390. The sewer system mapping requirement should be 25% of the system each year and inspecting 25% of the dry weather surveys a year. That way the last year can be used for evaluation. (7)

Response. The proposed requirements are appropriate for system mapping and dry weather surveys (outfall reconnaissance inventories).

Comment 391. Does this apply to just the area within the TMDL watershed or the entire municipality? (43)

Response. The requirements apply only to the areas shown on the map in Appendix 3 of the permit.

Comment 392. What is meant by entire small MS4 conveyances? Municipally owned and on private property? This could be a problem unless there are recent as-builts. (43)

Response. The requirement applies only to the conveyance system owned and operated by the permittee and points of connection to their system.

Comment 393. 1:24,000 is not enough to show desired detail. This is a fiscal burden that will not help eliminate illicit discharges. (43)

Response. The 1:24,000 is the minimum (e.g. for lower density infrastructure). Certainly, larger scale is essential where the infrastructure is higher density.

Comment 394. Articulate the intent of “all information shall be prepared in a digital format suitable for use in GIS software...”. DEC staff have stated to DOT that the intent of this requirement is to have MS4s inspect and locate private connections and potential illicit discharges that would otherwise not be found. If this is true, there is merit to this requirement. But, the mapping task involves a level of effort to obtain information that is not relevant to the objective. (48)

Response. The intent would be to allow data sharing in the watershed. If there is a trackdown that crosses a DOT right of way, that is not a simple culvert crossing, having the information in GIS format would allow the trackdown to cross the DOT right-of-way and pick up the trail on the trackdown. Detection and elimination of private illicit discharges is already a permit requirement.

Comment 395. Explain why the data should be “suitable for use in GIS software” - DOT has a database with construction record plans, they have a method to ID attributes at it’s drainage structures. DOT considers this task to be a duplication of existing data for the sole reason to be in a certain format for an unknown benefit. It is suggested that the mapping requirement be revised to an inspection requirement so that permittees that have not already inspected their drainage infrastructure be required to do so. (48)

Response. Data that would be suitable for use in GIS software is considered necessary to allow sharing of that information.

b. Develop, implement and enforce a program that requires property owners to (EOH)

Comment 396. Clarify that MS4s have property owners inspect septics within MS4 UA only. (7)

Response. The septic inspection and maintenance requirements apply to the areas within municipalities storm sewershed, within the area mapped in Appendix 3.

Comment 397. More clarification is needed about the septic inspection requirements. It will be onerous for homeowners and municipalities to implement. (9)

Response. The septic inspection requirement in the draft permit is a program to require homeowners to inspect onsite systems annually. When the inspection reveals that the system must be maintain (tank pumped) or rehabilitated, the system is maintained or rehabilitated. The final permit requirement is less prescriptive about how to implement the program and the minimum frequency of inspections has been reduced to once every three years.

Comment 398. This can have some regulatory uncertainty because County and/or State health depts currently regulate septics. The Model Law fails to include the administrative capacity at the MS4, county and state levels needed to ensure compliance; as well as the role that DEP, State and County health department must play for the system to work.

Additionally capacity and capability of the private sector needed to perform the tasks and training needed. (7, 43, 57)

Response. The most efficient way to implement requirements for inspection and maintenance of septic systems may be at the County level. Implementation at the County level, in accordance with an inter-municipal agreement would be allowed under the permit and is encouraged by the department..

Comment 400. Permittees may encourage owners to inspect, repair and /or replace failing systems, they don't possess the technical expertise or staffing to administer this program. This is relegated to Co. Health Departments in this region (EOH). (24)

Response. See response to comment 399.

Comment 401. No permittee or any agency has the ability or resources to monitor or enforce the provisions in section 9.2 of the State IDDE model law on a town-wide or watershed-wide basis. Specific examples include:

9.2.1.1 - most property owners are unqualified to inspect their septic tank annually or determine when the scum layers or top of sludge is within the critical distances in the law.

9.2.1.2 - There is no method that can be employed by the permittees to monitor or enforce the requirement that property owners avoid the use of septic tank additives.

9.2.1.3 - Permittees cannot monitor or enforce this requirement - property owners avoid the disposal of excessive quantities of detergents, kitchen wastes, laundry wastes, and household chemicals.

9.2.1.4 - Permittees cannot monitor or enforce this requirement - avoid the disposal of cigarette butts, disposable diapers, sanitary napkins, trash and other items. (24)

Response. See response to comment 399.

Comment 402. In the EOH, county health departments already have in place programs for the repair and replacement of individual sewage treatment systems. Requiring towns and villages in the EOH to establish similar programs is redundant and unnecessary. Can they just enter into agreements to work with county health departments. (24, 64)

Response. See response to comment 399.

Comment 403. There are many issues involved with regulation of on-site septic systems that are not addressed in the permit and Model IDDE Law. Because those issues aren't addressed, the true cost of implementing this program is not represented based on the activities described in the Model IDDE Law. If only the IDDE Law is pursued and not the other items that are needed, this program probably won't be beneficial. (43)

Response. The draft permit requirement was to develop a program, the law is just one part of the program.

Comment 404. The model law focuses on septic tank management, it does not address groundwater contamination. (43)

Response. On-site system management is a surrogate for groundwater contamination.

Comment 405. Delete language in the model law concerning septic systems and a guidance

document should be prepared as part of a joint effort between municipalities, the DEC, DEP, State and County health departments. That would ensure consistency. (43)

Response. The model law language has been deleted. The department agrees, a joint effort between municipalities, DEC, DEP, State and County health departments should be pursued.

Comment 406. Public must be informed of the cost of this program (for add'l govt services and costs to residents and businesses). (43)

Response. See response to comment number 38. There is a considerable spread in predicted costs for MS4 programs. But to the extent that such information exists, it is available to the public.

The public may also wish to consult the EPA analysis of the “Economic Analysis of the Final Phase II Stormwater Rule” available at:

http://cfpub1.epa.gov/npdes/docs.cfm?document_type_id=1&view=Policy%20and%20Guidance%20Documents&program_id=6&sort=name

Comment 407. Failing systems will be outside of the jurisdiction of the DOT ROW. It can be contended that this requirement contradicts the statement on Page 10 of the permit “...if a portion of a town drains directly into a stormwater system owned and operated by the State DOT, and this area of the town is regulated, the DOT will not be required to implement and enforce any portion of a SWMP in the area lying outside of its right of way.” (48)

Response. See response to comment 376.

Comment 408. It's better to control runoff and prevent erosion and sediment transport than removing sediment and restoring damaged waters. (12)

Response: The goal of the program is to reduce pollutants in stormwater runoff, including sediment, which is done by preventing erosion and sediment transport and phosphorus is often transported on soil particles.

4. Construction Site Stormwater Runoff Control (EOH)

- a. Develop, Implement and enforce...
- ii. Policy and procedures for permittees to

Comment 409. The permit should set time frames for inspections or inspections at project milestones, like clearing. (7)

Response. The Department has decided to let the MS4 establish the frequency at which the required inspections will be performed. The Department has, however, provided a recommended inspection points in Article 6., Section 1.1 of the Model Local Law for Stormwater Management and Erosion & Sediment Control. The schedule is based on completion of different phases for the construction rather than specific time frames.

Comment 410. Dealing with the less than 5000 square feet projects will significantly add to the costs of the MS4s to implement their SWMPs, whether they individually employ

qualified individuals or do inspections or share resources. The minimum required area should be 1 acre. (24)

Response. The reduction in project size is also one of the Center for Watershed Protection's key recommendations for reducing Phosphorus loadings in the watershed. The department is working to find the best way, through cooperation and collaboration of all involved agencies, to follow this recommendation in the most cost effective way possible.

Comment 411. This ends with an "...; and" is there a section missing? (43)

Response. The and is a typo that has been corrected in the final permit.

Comment 412. No date is provided for the required ordinance or other regulatory mechanism. Recommend a date prior to 12/31/09 be specified. (62 EPA)

Response. A compliance deadline of 12/31/09 has been included in the final permit.

5. Post-Construction Stormwater Management...(EOH)

Comment 413. Several of the requirements recommended by WPPC-TAC were removed. DEC needs to identify and explain the impacts of eliminating or reducing these programs on achieving the desired pollutant reduction goals. (7)

Response. The TAC recommendations were originally part of the department's proposals for enhancements to SWMPs in the New York City Watershed East of Hudson. However, in response to public comments, some of the more costly, lower impact requirements were dropped.

Comment 414. This program should not rely almost entirely on structural BMPs. End-of-pipe BMPs are not highly efficient or reliable. DEC should stress non-structural BMPs in these sensitive areas. It should also include preventative measures such as protecting sensitive areas such as wetlands and buffers. (12)

Response. The permit has been modified to include a definition of better site design, low impact development, and green infrastructure. In addition VII.A.5.iv. of the permit has been modified to further encourage these principles.

Comment 415. This doesn't call for examination of pre versus post development P loadings, as required by Watershed rules. (20)

Response. Please refer to the response to question 96.

Comment 416. There is a need for cost estimates for the program; because the program is so loose (not many details), can't budget /predict a cost. (43)

Response: The costs for each permittee are likely to be different. The permittee's need to develop their programs, determine their staff, equipment and other needs, and then calculate the costs for program implementation. The largest driving cost in the East of Hudson Watershed is likely to be the cost of installing stormwater retrofits. A good source for such cost estimates is the Center for Watershed Protections Retrofits Manual. The manual is available at:

http://www.cwp.org/Downloads/ELC_USRM3.pdf

and

http://www.cwp.org/Downloads/ELC_USRM3app.pdf

a. Develop, implement and enforce...(EOH)

Comment 417. This language does not contain any language that requires a reduction in phosphorus discharged. (20)

Response. See response to comment 91.

b. Develop, implement and provide adequate resources...(EOH)

Comment 418. The permit should specify a percent impervious surface area that should be addressed by retrofits within each municipal boundary. It decreases the amount treated (based on earlier docs?) And it decreases the ability to assess effectiveness or determination of if additional retrofits are needed. (7)

Response. Requiring retrofits of impervious area ignores the other sources that contribute to phosphorus loadings.. A retrofit program that targets the retrofits that are most cost effective is the fastest way to ensure compliance with water quality standards.

Comment 419. The draft permit should have a date certain by which retrofit enhancements should be designed and physically completed. (7)

Response. The dates for completion of individual retrofit projects will be set forth in the plans and schedules for retrofits. The date when all the final retrofit projects will be designed and physically completed has not yet been set.

Comment 420. “Develop and commence implementation...MS4 shall:” needs clarification. The words “correct, reduce, emphasis, problems” are vague, therefore there is no understanding of what is to be accomplished. Without clearly established goals, meeting the TMDL will not be measurable. (23)

Response. See response to comment 91.

6. Pollution Prevention and Good Housekeeping (EOH)

Comment 421. Several of the requirements recommended by WPPC-TAC were removed. DEC needs to identify and explain the impacts of eliminating or reducing these programs on achieving the desired pollutant reduction goals. (7)

Response. The TAC recommendations were originally part of the department’s proposals for enhancements to SWMPs in the New York City Watershed East of Hudson. However, in response to public comments, some of the more costly, lower impact requirements were dropped. See also comment 413.

Comment 422. Snow removal should be included in the tiered approach for EOH. At a

minimum, track and report the number of road miles and the volume of deicing materials used annually and avoid the use of deicing materials that contain elevated levels of P. (7)

Response. Most of the snow removal and deicing activities are not expected to result in elevated levels of P. The exception would be the use of phosphorus bearing anti-caking materials. The department will propose a prohibition against the used of phosphorus bearing anti-caking materials in a near term permit modification.

Comment 423. No date is specified for the development or implementation of the two programs. Dates should be specified. (62 EPA)

Response. Under the GP-02-02, a modified SWMP would have had to be completed by the compliance date for the permit (January 8, 2008). Except for outfall inspection and repair, the permit implementation schedule in the final permit allows until December 31, 2009 to fully implement the additional pollution prevention and good housekeeping BMPs.

a. Develop a Stormwater Conveyance System and ... (EOH)

Comment 424. The Program should be strengthened with more strict street cleaning requirements and snow removal restrictions. Proposed heightened criteria called for development of a comprehensive street sweeping program. A moderate street sweeping program should be included, at a minimum in areas that lack existing stormwater management practices should be required to sweep monthly. (7)

Response. There is still considerable debate about the costs and benefits of street cleaning. The street cleaning was removed because it is thought that all but the most aggressive street cleaning has very little effect on phosphorus loadings. While the most aggressive street cleaning may have an effect on phosphorus loading, it requires very frequent cleaning (daily) using very expensive equipment (>\$150,000) with very short service life (4 years). (Potential Effects of Structural Controls and Street Sweeping on Stormwater Loads to the Lower Charles River, Massachusetts, USGS, Pollution Prevention Fact Sheet: Parking Lot and Street Cleaning, Stormwatercenter).

The one area where street cleaning may be cost effect is in leaf removal. Street cleaning has been included as an option in the final permit for addressing phosphorus loading from leaf decay.

Comment 425. The MS4s should have to report on maintenance activities, like catch basin cleaning and their corrective actions should be recorded and reported. Keeping these records will help assess the conveyance system's effectiveness, like if certain basins have heavy loads they'd want to clean them more frequently. (7)

Response. In the final permit, catch basins cleaned has been separated from post construction practices cleaned to account for the practices separately.

i. Policies and Procedures for inspection and maintenance of catch basins....(EOH)

Comment 426. The cleaning of sumps and catch basins should be more than two times a year, preferably at a minimum after the last snow fall and once in the fall. (7)

Response. Two times per year for catch basin inspection and, where necessary, cleaning is an appropriate minimum frequency. More frequently cleaning may be necessary for catch basins

identified as subject to heavier pollutant loads.

Comment 427. This inspection frequency is too frequent for most catch basins. Initially, annual inspections in the spring should be performed on approximately 20% of the basing per year. After the initial inspection, an inspection schedule for the basins can be done based on the expected rate of accumulation, or something similar to avoid having this become cost prohibitive. This schedule may require more or less frequent inspections. Clarify expectations for frequencies. (43, 48, 65)

Response. The catch basin inspection and, where necessary, cleaning is an appropriate minimum frequency. The comment is correct, many catch basins would require more frequent cleaning.

ii. Policies and procedures for inspection, maintenance and repair of conveyance....(EOH)

Comment 428. The bank stability problems at outfalls will likely require a State Article 15 permit. A streamlined process for permitting repair should be developed by DEC. (24)

Response. The State Article 15 process is for protection of streams. While some permits may be more or less difficult than others to obtain, it would not be appropriate to undertake a project to protect water quality without properly protecting the stream. Thus, individual Article 15 permits must be obtained where necessary.

b. Develop a turf management practices....(EOH)

Comment 429. Modifying leaf collection programs with no flexibility allowed under this permit will be difficult in some communities. Additional flexibility for implementation is needed. (9)

Response. The purpose of leaf collection programs is to remove decaying leaves from impervious areas. Decaying leaves on impervious areas can be up to 50% of the phosphorus load (Watershed Protection Techniques, Urban Lake Management, Volume 3, No. 4 - December, 2001). The final permit requirement has been modified to allow for other alternatives for keeping leaves from decaying on or near impervious areas.

Comment 430. The cost of buying proper leaf containers does not offer much environmental benefit over leaf vacuum system. Plus, it's more difficult for homeowners to put leaves into the sacs or bins. (43)

Response. See response to previous comment number 429.

B. Other Phosphorus Watershed MS4s - Additional Minimum Control Measures

Comment 431. The EOH requirements applied to the Onondaga Lake watershed are not a good fit because EOH is a drinking water supply and Onondaga is not. MS4s are required to start developing plans and schedules for implementing the retrofit projects to address the Onondaga Lake TMDL before the state has completed revisions to the TMDL. Consider postponing the Onondaga Lake requirements until the TMDL is revised and local watershed models are available for use to maximize retrofit effectiveness and cost efficiency. (4, 21A, 30, 34, 70)

Response. Although Onondaga Lake is not a drinking water supply, it is an important lake with high phosphorus loadings, in which federal, state and local governments have invested large sums of money to address non-stormwater discharges. To be certain whether additional, albeit much smaller amounts of money must be invested to fully restore the lake to sustainable phosphorus levels, the final permit allows time for completion of the TMDL revision prior to submission of retrofit plans and schedules.

Comment 432. The state is revising the TMDL for Onondaga Lake. Without it revised and without the models completed, it is not possible to accurately ID P loadings from the watershed and assess the activities that should be done to achieve reductions. Need to be sure that a watershed study is completed to determine the actual sources so post construction retrofits aren't done and then have no impact. (21A, 22, 30, 34)

Response. See previous response to comment 431.

Comment 433. The best solution to deal with the P issue is to take a county or regional approach. (22)

Response: Part IV.F. of GP-0-08-002 encourages inter-municipal cooperation among the MS4s to meet all permit requirements. Inter-municipal cooperation can take the form of a county or regional approach.

Comment 434. The department should have local school kids to take samples for baseline P assessment, with training from SWCD and to store data. Municipal engineers could pick locations. Extra benefit of education. (22)

Response. Implementing such a recommendation could certainly have educational benefits. However, even dry weather sampling involves a likely safety risk, depending upon the access that is available to outfalls or streambanks. In the past, the data from this type of monitoring program has not been as dependable as data from programs with better quality assurance/quality control.

Comment 435. The introduction to this section should include a reference to the appropriate appendices to indicate the watersheds that are subject to these requirements. (48)

Response. The recommended change has been included in the final permit.

Comment 436. Specific information /guidance on recommended P removal measures would be helpful for construction/post for Greenwood Lake; how will the success of the controls in the permits be monitored and evaluated for Greenwood Lake. (51)

Response. The recommended guidance is the Center for Watershed Protection Retrofit Manual available at:

http://www.cwp.org/Downloads/ELC_USRM3.pdf

and

http://www.cwp.org/Downloads/ELC_USRM3app.pdf

Comment 437. should only be P not N or pathogens. (21A)

Response. The recommended change has been included in the final permit.

Comment 438. A highly visible education/outreach program with demonstration efforts could result in meaningful, voluntary reductions in P inputs to the watershed. (30)

Response. Comment noted.

2. Public Involvement/Participation (other P watersheds)

Comment 439. Remove “for” (48)

Response. The recommended change has been included in the final permit.

3. Illicit Discharge Detection and Elimination (other P watersheds)

Comment 440. The IDDE program for addressing failing septic systems in an area predominantly served by sanitary sewers would be costly, with costs exceeding any anticipated benefit. Outreach and education would be a much more cost-effective approach. (4, 21A, 30)

Response. The final permit exempts the Onondaga Lake Watershed from the failing septic systems requirement.

Comment 441. For systems not regulated by County Health Departments, it seems enforcement would fall upon code enforcement officers. They are already under large obligations, and could not handle the additional work load. This work should be done by State and County agencies. This risks redundancy with counties if the work is done at the local level. (28, 33, 49, 57,58)

Response. Permittees are encouraged to seek inter-municipal agreements that allow for implementation by the appropriate level of government. The requirement is included in the permit to ensure that it applies to all areas, not just those controlled by one level of government or another. What some areas have done is to contract with the County Soil and Water Conservation District to perform stormwater inspections. A copy of an example contract is included as Appendix C.

5. Post-Construction Stormwater Management (other P watersheds)

Comment 442. Commentors want to see performance data for practices for soluble P reduction. Infiltration may provide better performance. Places strong reliance on practices that haven’t been proven to be effective. (17, 30, 34)

Response. The EPA Best Management Practices database is now searchable on-line at:

<http://cfpub.epa.gov/npdes/stormwater/urbanbmp/bmpeffectiveness.cfm>

Comment 443. The program should be on a county or regional basis. That way their retrofits could be placed in areas where land is available and the costs are distributed over all in the program, not just individual municipalities. Most Villages and little towns don’t

have room for retrofits. (22)

Response. Part IV.F. of GP-0-08-002 encourages inter-municipal cooperation among the MS4s to meet all permit requirements; permittees subject to the TMDL requirements may work together on a county or regional basis.

b. Develop and commence implementation of a Retrofit Program...

Comment 444. Some MS4s are not sure how to implement the retrofit program. Is it by requiring these requirements to private properties that are being redeveloped? How do you address private properties not being developed? Or, does the MS4 only address municipally owned properties. This requires a lot of public input, getting funding, etc as well.

Developing a retrofit program in 1 year is very aggressive based on these concerns. (14, 28)

Response. All options must be considered in developing a retrofit program. To allow for such considerations, the deadline for submission of retrofit plan and schedules have been extended in the final permit.

Comment 445. Onondaga Co is implementing a “first flush” CSO program. Based on the magnitude and impact of the program, will capture a significant amount of the current overflow volume, this meets the “retrofit” needs for the entire SUA and Onondaga Co by reducing P in discharges. (21A, 30)

Response. The existing TMDL calls for reducing non-point source loadings by half. That reduction is beyond what will be achieved in the CSO program. Nonetheless, in order to allow a revised TMDL to be taken into consideration, the deadline for submission of retrofit plans and schedules has been extended in the final permit.

Comment 446. To ensure the retrofits are working, extensive monitoring would be required, which will be costly. (30)

Response. Tracking of program effectiveness is required through less costly modeling.

Comment 447. The permittees should get more than December 31, 2008 as the deadline. The entire project is dependent upon design, construction and funding.(49, 58)

Response. The deadlines have been extended in the final permit.

6. Pollution Prevention and Good Housekeeping (other P watersheds)

i. procedures for proper fertilizer application....

Comment 448. DOT has Landscape Architects that can do this. This section should be revised to allow alternative methods of quality control.(48)

Response. The final permit includes language identical to the language for East of Hudson phosphorus applications; lay people are allowed to collect soil samples and apply phosphorus based on those sample results.

C. Pathogen Watershed MS4s - Additional Minimum Control Measures

Comment 449. The MS4s in the 27 Long Island Shellfishing Pathogen TMDL areas should also be subject to these requirements, even though the TMDL was developed before these regulations. Most of the communities are continuing permittees. It seems inconsistent that new permittees in new TMDL areas have to comply, but not in existing TMDL areas. (42)
Response. Requirements for the 27 Long Island Shellfishing Pathogen TMDL areas will be proposed in a near term permit modification.

Comment 450. Specify the MS4s that must comply; do continuing permittees need to comply. (42)
Response: Continuing permittees must comply.

Comment 451. The introduction to this section should include a reference to the appropriate appendices to indicate the watersheds that are subject to these requirements. (48)
Response. The final permit includes the recommended change.

2. Involvement/Participation (Pathogen Watersheds)

Comment 452. Remove “for” (48)
Response. The recommended change was included in the final permit.

3. Illicit Discharge Detection and Elimination (Pathogen Watersheds)

a. Develop, implement and enforce...

Comment 453. Who is required to do the enforcement, inspection of failing septics and associated local laws related to this, just the traditional MS4s? (1)
Response. See response to comment 375.

Comment 454. Change from “this should include the adoption of a local law...” to “must” (42)
Response. This section has been rewritten in the final permit.

5. Post construction (Pathogen Watersheds)

Comment 455. The procedure required to form a committee, determine goals and funding to have a functioning retrofit program will take more than one year. At a minimum, extend it to 2 years. (1)
Response. The deadline for submission of a retrofit plan and schedule has been extended to 3/9/2011.

Comment 456. Structural retrofits are being required. Recommend that LID practices, natural resource inventories, watershed-based plans, etc. also be encouraged / required. (42)
Response. The definition of retrofit includes LID (BSD) practices. To broaden the possible retrofit alternatives, reforestation has been added to the retrofit definition in the final permit.

Comment 457. Are full SWPPPs required by the state in the TMDL watersheds? (42)

Response. Yes.

6. Pollution Prevention and Good Housekeeping (Pathogen Watersheds)

Comment 458. Items a and b are redundant, they should have already been done by municipalities. (19)

Response. These items are not redundant and were not explicitly required by GP-02-02.

b. Develop and implement a pet waste bag program...

Comment 459. Onondaga County has a volunteer pet waste plan around lake park. A local law prohibiting pet waste is not required. (21A)

Response. This section doesn't apply in the Onondaga Lake Watershed.

c. Develop a goose population management program.

Comment 460. DEC should provide/reference resources info for this. (19)

Response. Descriptions of appropriate responses to nuisance geese are available at:

<http://www.dec.ny.gov/animals/7003.html>

D. Nitrogen Watershed MS4s - Additional Minimum Control Measures

Comment 461. Specify the permittees that must comply; do continuing permittees need to comply. (42)

Response. All permittees must comply with these requirements.

3. Illicit Discharge Detection and Elimination

a. Develop Implement and enforce a program..

Comment 462. change from “this should include the adoption of a local law...” to must (42)

Response. This section has been reworded in the final permit.

5. Post-construction Stormwater Management

Comment 463. Structural retrofits are being required. Recommend that LID practices, natural resource inventories, watershed-based plans, etc. also be encouraged / required. (42)

Response. LID practices and watershed based plans are encouraged in the final permit.

Comment 452: Are full SWPPPs required by the state in the TMDL watersheds? (42)

Response. Yes.

6. Pollution Prevention and Good Housekeeping.
i. procedures for proper fertilizer management...

Comment 464. It would be beneficial for the state’s requirements with regard to fertilizer applications in Suffolk Co to be consistent with the Co Local Law IR2117-2007. They are proposing to ban fertilizer applications on all non-ag properties. (42)

Response. The permit requirements do not appear to conflict with the County law.

Comment 465. CCA is overly prescriptive, provide a more broad definition of a qualified supervisor. (53)

Response. The final permit also allows for licensed landscape architects to oversee Nitrogen fertilizer applications.

Part X. ACRONYMS AND DEFINITIONS

A. Acronym List

Comment 466. Add MCC and LID (48)

Response. These acronyms have been added to the final permit.

B. Definition

Comment 467. The people ultimately responsible for the implementation of this permit will likely not be technically trained. The permit definitions should be consistent with Construction permit and Laws. (11)

Response: Comment noted. The permits were reviewed to ensure consistency.

Construction Activities

Comment 468. Has an example of a definition for this that takes into account the other permit and laws (11)

Response. This definition is consistent with the definition in the construction stormwater permit and has been developed based on the experiences of phase II stormwater permitting.

Discharges

Comment 469. Replace “outlet” with “outfall”, assuming that the entire definition of “outfall” as defined in this section is applicable to the definition of “discharge”. (18)

Response. This definition is taken directly from 6NYCRR Part 750. In accordance with 6NYCRR Part 750,-1.2(a)(59), outlet means outfall.

Comment 470. Outlet is not defined. If it is construed to include stormwater outfall pipes, demonstrating no increase of pollutants in 303(d) would be virtually impossible to accomplish without first sampling each outfall under various conditions and then continue sampling. (33)

Response. Demonstrating no increase of pollutants is by modeling in accordance with III.B. of the permit.

Discharge Authorized by a SPDES Permit

Comment 471. Provide examples for definitions 1 through 5. (42)

Response. The definition of “discharges authorized by a SPDES permit” comes directly from 6NYCRR Part 750.

Groundwater

Comment 472. Amend definition to read “water in the seasonally saturated zone”. (7)

Response. The definition comes directly from 6NYCRR Part 750.

Larger Common Plan of Development or Sale

Comment 473. Add as an example of an announcement SEQRA application. (7)

Response. The example has been included in the final permit.

Comment 474. Projects should only be considered separate when \geq 1/4 mile apart if not hydrologically connected. (7)

Response. The proposed interpretation of which projects are separate is in accordance with EPA guidance and department guidance.

Maximum Extent Practicable

Comment 475: last line “standard” not “statndard” (48)

Response. The recommended change was included in the final permit.

Measurable Goals

Comment 476: Delete the examples. The assumption is that MS4s will create a program schedule and goals that will allow them to achieve compliance over the 5 years. The examples put undue pressure on the MS4s, gives regulators a chance to question the work done, and suggests inequitable level of compliance between larger and very small MS4s. (18)

Response. The examples have been deleted in the final permit.

Comment 477. line 5 - intergrated not integrated. (65)

Response. The recommended change is included in the final permit.

Comment 478. Add a definition of Minimum Control Measure (48)

Response. The recommended definition has been added to the final permit.

Non-traditional MS4s

Comment 479. What is considered an “other special district”? Town sewer, water and drainage districts? What about inter-municipal districts, such as a county sewer district? A more explicit definition would be helpful, otherwise existing and future MS4s may be confused. Many traditional MS4s, for example, own and operate sewer and water districts. (67)

Response: “Other special district” was also used in the definition or description of types of non-traditional MS4s in GP-02-02. If a geographic area is already covered by one permittee’s SWMP, a new SWMP would not have to be developed if there was a special district in place or formed later on.

Pollutants of Concern

Comment 480. Why differentiate? They all have to be addressed by the SWMP. (2)

Response. The secondary POCs are considered a less prevalent cause of water quality impairments.

Qualified Professional

Comment 481. Has an example of a definition for this that takes into account the other permit and laws. (11)

Response. The definitions in the construction permit are consistent with the definitions in the MS4 permit.

Comment 482. DEC staff at outreach meetings have indicated that the intent of the wording is to provide examples, not to limit the field of potential qualified professionals. Replace such as with “including, but not limited to”. At a minimum, DEC needs to clarify whether these descriptions are inclusive or exclusive. Should also include “Certified Professional in Stormwater Quality (CPSWQ). (48)

Response. The definition has been modified in the final permit.

Small MS4 -

Comment 483. Can the Department provide clarification on the definition of small MS4 versus the other types of MS4s. (2)

Response. The term small MS4 is defined by federal regulation (40 CFR Part 122).

Stormwater Management Program Plan

Comment 484. Need guidance on how to put these together.(13)

Response. Assembling a SWMP plan should be as simple as assembling copies of the listed documents in one place. At which point, that plan becomes available to staff, DEC, EPA and the public to better understand the local MS4 program.

Comment 485. says “...must describe how pollutants in stormwater runoff will be controlled...”. This is strong language that requires the MS4s to design systems to have total control over the pollutant, rather than mitigate or lessen impacts. Total control over a pollutant is virtually impossible. Request that plan describe how pollutants will be reduced

to the MEP. (33)

Response: The final permit language has been modified to say the permittee will address and reduce POCs to the MEP.

Stormsewershed

Comment 486. Definition should be expanded to clarify whether the drainage areas to different outfalls should be considered different sewersheds. (48)

Response. The definition has been clarified in the final permit.

TMDL

Comment 487. Last sentence “source” is spelled wrong. (7)

Response. The recommended correction has been included in the final permit.

Traditional Land Use Control MS4

Comment 488. What exactly is the grouping criteria for traditional - land use control, traditional non-land use control, nontraditional? Are traditionals municipal corporations with elected officials who make laws? Are non-traditional any kind of publicly owned entity that does not involve elected officials? Some descriptor of what distinguishes a traditional from a non-traditional would be beneficial. This is important when mapping outfalls and knowing where an outfall enters an adjacent MS4. (67)

Response: The naming or classification scheme for the types of MS4s based on their broad abilities related to their ability to adopt land-use control laws. The classification of MS4s based on the type of entity in the definitions should be sufficient to determine who is responsible for outfalls.

Traditional Non-land Use Control MS4 -

Comment 489. What is meant by County Agency? County government or agencies within county government? If it is county government generally, as an entity consisting of elected officials with law-making authority, it should be stated as such. This term is confusing for county governments. Counties may not have the power to adopt land use regulations, they do have the authority to develop a county comprehensive plan (listed as a non-structural management practice to be incorporated into a post-construction SWMP) and official map. This term also suggests that counties have nothing to do with land use planning and inter-municipal cooperation. A clearer definition of non-land use control, based on general municipal law and a more descriptive explanation of how counties engage with the land use planning process would be helpful. Relevant sections of General Municipal Law are Sections 239 (Article 12-B) and Section 199-u. (67)

Response: County agency is any county government and agencies within county government. This definition was to help differentiate between traditional MS4s that could adopt land use control laws and those that could not. This differentiation was made to help clarify the requirements related to local law adoption.

Part XI. RE-OPENER CLAUSE
APPENDICES

Comment 490. The maps need to be more clear or in electronic form to better determine affected locations. (10)

Response. The maps have been included on the NYSDEC stormwater interactive map.

Appendix 1. List of NYS DEC Regional Offices

Appendix 2. 303(d) Stream Segments, Primary Pollutants of Concern, and Source of Pollutants

Comment 491. Should state the date of the 303(d) list, mention it's updated every two years and clarify that permittees are responsible for determining whether a particular water body is presently on the 303(d) list. (7)

Response. Updates to the list will be by modifications to the permit.

Comment 492. The segments should be mapped with contributing watersheds. (10)

Response. The segments are mapped and the mapping information is available at:

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

Comment 493. The title of the appendix has pollutant(s), but the table heading is "Pollutant", so it's not clear what the table is presenting, please clarify. (18)

Response: The table is presenting the pollutant or pollutants of concern for the impaired waterbody segments listed.

Comment 494. The number of primary POCs and sources listed for Onondaga Co waters are no longer current. Several tributaries to Onondaga Lake are not listed because they are impaired, but because they are tributaries to Onondaga Lake. This is particularly significant with respect to ammonia, which meets the water quality standards in the Lake. The Seneca River, lower and main stem are not impaired by pathogens. These errors should be corrected. (21A)(72)

Response. The list has been corrected and is current in the final permit.

Comment 495. The 303(d) here has 266 waterbodies, some are outside of the designated UA's. This section should include an explanation as to why these additional waterbodies are included in the list. The maps of the 303(d)s for construction and MS4s should be on the interactive map. (48)

Response. The other 303(d) streams are listed for the MS4s that chose voluntarily to apply for a permit.

Comment 496. Sources aren't listed, only POCs (48)

Response. The source language has been deleted in the final permit.

All maps

Comment 497. Specify here and in the appendices if the maps are topographic drainage and / or stormsewershed area. Recommend that MS4s be directed to more precise GIS depictions of TMDL waterbody contributing areas if accessible. (42)

Response. The maps are area that define where watershed improvement strategy requirements apply. In those areas, the requirements apply to the permittee's storm sewershed areas within their jurisdictional boundaries.

Comment 498. These should be on the interactive map or reference where they are available. (48)

Response. The interactive map has been updated to include the reference maps.

Appendix 3. New York City Watershed East of Hudson River Watershed Map

Appendix 4. Onondaga Lake Watershed Map

Appendix 5. Greenwood Lake Watershed Map

Appendix 6. Oyster Bay Watershed Map

Appendix 7. Peconic Estuary Pathogen Watershed Map

Appendix 8. Peconic Estuary Nitrogen Watershed Map

Appendix 8 - "Designation Criteria for Identifying Regulated Municipal Separated Storm Sewer Systems"

Comment 499. Appendix 8 was not included with draft permit. Referred to in Part II.B. (7)

Response. The additional designation criteria are included in the definitions section.