



Responsiveness Summary
For
Public Comment Received
On the modifications to
NEW YORK STATE
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
SPDES GENERAL PERMIT
FOR STORMWATER DISCHARGES

From

Municipal Separate Storm Sewer Systems (MS4s)

Permit No. GP-0-10-002

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

Background

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

The New York State Department of Environmental Conservation has prepared this responsiveness summary to address the comments that were received on the proposed modifications to SPDES General Permit for Stormwater Discharges from MS4s, GP-0-10-002. The draft modification was published for public review and comment in the Environmental Notice Bulletin (ENB) on March, 16 2011 with comments being due by April 15, 2011.

This responsiveness summary addresses the only comment received through this process. This comment refers to Appendix 2 of the GP-0-10-002. As the result of this comment this appendix is being updated. All other conditions or language in the MS4 general permit GP-0-10-002 that has not been modified or updated in the referenced notice remain unchanged. Pursuant to 6 NYCRR 750-1.18(e), “[w]hen a permit is modified; only the aspects of the permit that are modified are subject to public review.”

Comment: There are inconsistencies between Appendix 2 and the Final New York State 2010 Section 303(d) List of Impaired Waters Requiring a TMDL/Other Strategy (“303(d) List”). Given that DEC is proposing to amend Appendix 2 now, there is no reason not to update it fully to include all relevant impaired waters on the most current 303(d) List and correct discrepancies.

Response: The NYSDEC agrees that it is appropriate to update Appendix 2, as part of this permit modification, to reflect the current Priority Waterbodies List (PWL) and Section 303(d) listings of impaired waters across the State. The current Section 303(d) List of impaired waters was issued in June of 2010, about a month after issuance of the MS4 general permit. The updated list and the procedure for selection of the impaired segments are provided in a factsheet (attached). It must be noted that:

- a- The impaired waters listed in Appendix 2 are derived from a more comprehensive list than the Approved 303(d) segments. The intent is to direct the MS4 effort towards a proactive plan in relation with impaired waters. The deadline for implementation of Part III.B(1) for the newly added segments will be addressed in the next permit cycle.*
- b- The requested segments in the comments are not necessarily listed in Appendix 2. The procedure in the factsheet explains the selection process. The primary point is the focus on the pollutant of concern (POC) as defined in the Definition section of the permit. This section of the permit was not subject to modification. The comments related to new POCs will be kept on file for consideration during future reissuance of the permit.*

Impaired Waters Listed in Appendix 2 of the MS4 Permit
Selection Description
October 2011

- 1- With each reissuance of the MS4 general permit, the NYSDEC updates Appendix 2 of the permit to reflect the most current Priority Waterbodies List (PWL) and Section 303(d) listings of impaired waters across the State. The Section 303(d) List of impaired waters is issued biennially, while the MS4 permit cycle is 5 years.
- 2- The list of impaired waters in Appendix 2 is subject to Part III.B(1) of the MS4 permit which calls for the following:
 - a. Special Conditions apply to impaired waters without Watershed Improvement Strategy (WIS) or future TMDLs
 - b. If a small MS4 discharges a stormwater pollutant of concern to segments listed in Appendix 2 of the permit they must ensure no net increase in its stormwater discharge of the listed POC to that water.
- 3- The Pollutants of Concern (POC) is defined in the MS4 permit as:
 - a. There are POCs that are primary (comprise the majority) sources of stormwater pollutants and others that are secondary (less likely).
 - b. The POCs that are primarily of concern are: nitrogen, phosphorus, silt and sediment, pathogens, flow, and floatables impacting impaired waterbodies listed on the Priority Waterbody List known to come in contact with stormwater that could be discharged to that water body.
 - c. The POCs that are secondarily of concern include but are not limited to petroleum hydrocarbons, heavy metals, and polycyclic aromatic hydrocarbons (PAHs), where stormwater or runoff is listed as the source of this impairment.
 - d. The primary and secondary POCs can also impair waters not on the 303(d) list. Thus, it is important for the covered entity to assess known and potential POCs within the area served by their small MS4. This will allow the covered entity to address POCs appropriate to their MS4

- 4- The list of impaired waters in Appendix 2 is excerpted from the more comprehensive list of impaired/impacted waters on the Priority Waterbody List (PWL) according to the following procedure:
- a. All segments categorized as Impaired on the PWL are included in the initial listing. This initial listing includes all waters identified as impaired regardless of the source. For many of the segments stormwater runoff is not the primary contributor to an existing impairment.
 - b. Segments assigned to other categories (i.e., Threatened, Possible Threat, No Known Impact, Minor Impact, and Need Verification) are not included in the listing (1150 segments).
 - c. Impaired segments with the source of problem identified as Atmospheric Deposition are removed from the listing (909 segments), since addressing atmospheric deposition as a source is independent from urban runoff control.
 - d. Segments with nutrient (nitrogen or phosphorus), silt and sediment, pathogens, flow, and floatables listed as primary pollutants are selected as well as those with oil and grease, metals and organics (PAHs) as secondary POCs. This selection factors in only the pollutants that are found to be the primary cause of impairment.
 - e. A few other segments are considered for addition/deletion based on identified pollutant and source.
 - i. Segments listed as impaired by ammonia are not included because urban runoff is not the source of the ammonia impairment. Note, urban runoff does appear as a source of other pollutants that are also affecting the segment.
 - ii. Segments impaired due to temperature as a pollutant are included only if urban runoff is the source of the thermal impact (1 segment included).
 - iii. For segments listed with impairment from aquatic toxicity, the impairment reflects verified biological impact that cannot be attributed to a specific pollutant. Because the pollutant is unknown, the source is typically unknown as well. These segments are not included in

Appendix 2 of the permit unless the toxicity is verified to be caused by Urban/stormwater runoff or a pollutant that meets the definition of POC as contained in the MS4 permit.

- iv. One segment (Almond Lake) is kept on the list because the source (streambank erosion) and specific pollutant (water clarity) collectively cause a problem which can be aggravated by urban runoff.
- v. Segments that are subject to an approved TMDL and are included in WIS areas, already subject to the requirements of the MS4 permit, are removed from this list.
- vi. The segments that are not within the drainage areas associated with MS4s are removed from this list

5- Appendix 2 is maintained until the next permit renewal. Future updates to the PWL and 303(d) List are independent from the permit reissuance term.

6- In the process of reissuing the MS4 permit the definition of POC may be revised and the list of POC can be subject to modification to include those new POCs.

It must be noted that only the list of impaired waters included in Appendix 2 of the MS4 permit is addressed in the proposed modification to the MS4 permit. No other conditions of the permit, including Part III. B or the definition of POC is subject to modification at this point.