



Responsiveness Summary

For

Public Comments Received

On the

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Draft Retrofit Program Plan Guidance Document

for Pathogen Impaired Watershed MS4s on Long Island

December 2013

Background

On September 5, 2012, the New York State Department of Environmental Conservation (Department) public noticed the draft Retrofit Program Plan Guidance Document for Pathogen Impaired Watershed MS4s on Long Island for a 30 day comment period. This guidance document instructed the MS4 operators to provide the Department with accurate information regarding their sewersheds and to verify the presence of an MS4 outfall to the various pathogen impaired waterbodies. The information requested in the Retrofit Plans per the Draft Guidance document is expected to provide information necessary to revise the TMDLs, reflecting accurate information about the MS4's actual contributions to the impaired waters. During the public comment period, the Department received 5 sets of comments resulting in minor changes and on December 18, 2013, the Department finalized the guidance document.

The Department has prepared this responsiveness summary to address the comments that were received on the draft Retrofit Program Plan Guidance Document for Pathogen Impaired Watershed MS4s on Long Island.

The responsiveness summary addresses all comments received, with the exception of comments dealing with editorial or formatting changes. Frequently raised issues are summarized and presented as one set of comments. Questions or comments received on the TMDLs or the SPDES General Permit for Stormwater Discharges from Municipal Separate Storm Sewer Systems, GP-0-10-002 (MS4 Permit), were outside the scope of this Guidance document, and are not addressed in this responsiveness summary.

1. What is the due date of the Retrofit Plan submissions?

Response – The MS4 Permit specifies the deadlines for submission of approvable retrofit plans. Approvable is defined as that which can be approved by the Department with only minimal revision. Minimal revision is defined to mean revised and resubmitted to the Department within 60 days of notification by the Department of the revisions that are necessary (6NYCRR 750-1.2(8)). The Department will review the information that has been provided by MS4 operators for conformance with the Final Guidance and either approve or notify them of revisions necessary to allow approval of the plan per the Final Guidance. Plans that can be revised and resubmitted to the Department within 60 days of receipt of our notification that revisions are necessary will be considered to be in compliance with the MS4 Permit deadlines.

2. Numerous comments were received indicating that maps were available but not in GIS format or expressing concerns regarding licensing agreements that may restrict the sharing of data.

Response - The Final Guidance allows the submission of maps in formats other than digital GIS. The Final Guidance states that maps shall be provided in pdf format. Scanned versions of hardcopy paper maps or maps electronically converted from GIS will be acceptable. Where GIS is used to create the maps, supporting data layers in GIS format should be submitted as well. Maps must be high quality resolution have a scale of 1:200 or better and must contain all of the requirements of Section 6.0 of the Final Guidance.

3. The Sag-Harbor map in Appendix B shows all zones. However, the permit only lists Sag Harbor – Zone 2 as requiring pathogen reductions. Please clarify whether retrofit plans are required for the other zones shown in Appendix B

Response - Retrofit plans and Watershed Improvement Strategies (WIS) are only required for covered entities within the watersheds of waters specified in Table IX.C of the MS4 Permit. Since Sag Harbor – Zone 2 is the only waterbody listed in Table IX.C, retrofit plans and WIS are only required for Sag Harbor - Zone 2

4. As an MS4 Operator in the Hempstead Harbor watershed, do I have to submit a retrofit plan if my MS4 does not discharge to the impaired section of Hempstead Harbor North?

Response - The MS4 Permit specifies that covered entities within the watersheds of waters specified in Table IX.C must develop and implement additional Minimum Control Measures (MCMs) for areas within their jurisdiction and storm sewersheds. Table IX.C lists Hempstead Harbor North and tidal tributaries. The TMDL analysis for the Hempstead Harbor North and tidal tributaries watershed includes the sub-watersheds of Hempstead Harbor South and Glen Cove Creek. Therefore, retrofit program plans

meeting the Final Guidance must be submitted for all MS4s discharging to the waterbodies in the Hempstead Harbor watershed.

5. What is the definition of Pathogen as used in the Guidance?

Response – Pathogens are viruses or bacteria that are harmful to humans and can potentially be retained in shellfish. Fecal Coliform is the surrogate for pathogens as defined in the National Shellfish Sanitation Program.

6. What waterbodies does the Guidance apply to?

Response - This guidance applies to MS4s discharging to the 27 shellfishing areas and the Peconic Estuary TMDL waterbodies that have reduction requirements specified in Table IX.C of the MS4 Permit.

7. Does the Department consider any potential pollution due to waterfowl, septic systems, cesspools and/or groundwater as contributors?

Response – The purpose of the retrofit program is to help estimate the pollutant contribution from the MS4. While the TMDL did not specifically consider these sources, the Department intends to take into account pollution from sources other than land use. If the MS4 operator suspects potential pollution from particular sources to be a major concern, indication should be made within the background information section provided in the retrofit plan submitted to the Department.

8. The Shellfish Pathogen TMDLs for 27 303(d) listed waters is not adequate for determining MS4 contributions to the pathogen impaired waterbodies.

Response - The purpose of the Final Guidance is to obtain data that will help the Department better understand each MS4's contribution to the pathogen impaired waterbodies.

9. Does Suffolk County (NYR20A180) discharge to an impaired waterbody?

Response – Suffolk County is a traditional non-land use MS4 operator that has a number of sewersheds within watersheds of impaired waterbodies. Appendix B of the Final Guidance contains two sets of maps. One set identifies the major roads (County and State owned) that indicate Suffolk County owns/operates a system within the watersheds of several impaired waterbodies listed in Table IX.C. These sets of maps were incorrectly identified as “Pathogen Impaired Maps for Non-Traditional MS4s”. This has been corrected in the Final Guidance to indicate that the maps identify the Traditional Non-Land Use MS4s for the various waterbodies. These maps may not show all of the

facilities owned/operated by the State and County entities. The retrofit program plan submissions for these entities must identify the sewersheds of all outfalls within the watershed boundaries. Appendix C of the Final Guidance indicates the waterbodies for which retrofit program plans are expected from Suffolk County.

10. Some municipalities are not represented in Appendix C. Was this an oversight?

Response – Some smaller MS4 operators (villages) have recently become independent of the Towns that encompass them. These newer regulated entities are now represented in Appendix C. It is the responsibility of the MS4 operator to review the watershed boundaries and ensure that they submit a plan if they own or operate a system that discharges to an impaired waterbody listed in Table IX.C of the MS4 Permit.

11. Why were methodologies to compute pet waste different between TMDLs? Will there be consistency when the MS4 load disaggregation occurs?

Response – The Department acknowledges that different methodologies were used in the TMDL documents. The Department will correct these inconsistencies through implementation.

12. Can the 100yr, 24hr storm event criteria be lowered for drainage areas contributing to recharge basins as discussed in Section 4.0?

Response – If stormwater is all contained at a facility and is discharged solely to groundwater, through on-site infiltration and off-site recharge basins, SPDES permit coverage under 40 CFR 122.26 is not required. EPA believes that the 100 year, 24 hour rainfall event criteria provides the protection of surface water resources that the Agency intended. The Department shares this position. If a recharge basin is designed to capture and infiltrate the 100yr, 24hr storm event, it may be removed entirely from the regulated MS4 sewershed. Recharge basins that are not designed to handle the 100yr, 24hr storm event will be considered retrofits and credit will be given accordingly.

13. Why are retrofits prior to 2007 not credited?

Response –The Final Guidance has been revised such that MS4 operators may submit information for all retrofits that have been completed and the date they became operational. The Department will consider this information in determining the baseline load.