DRAFT

FACT SHEET

for

NEW YORK STATE
DEPARTMENT OF ENVIRONMENTAL
CONSERVATION
SPDES GENERAL PERMIT
for
STORMWATER DISCHARGES

from

MUNICIPAL SEPARATE STORM SEWER SYSTEMS (MS4s)

Permit No. GP-0-22-002

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

January 12, 2022
Preface

Pursuant to Section 402(p) of the Clean Water Act (CWA), 40 CFR 122.26, 40 CFR 122.32(a), and 6 NYCRR 750-1.4(b), discharges of stormwater to surface waters of the State from small municipal separate storm sewer systems (MS4s) located in urbanized areas, and those additionally designated by the New York State Department of Environmental Conservation (Department), must be authorized by a National Pollutant Discharge Elimination System (NPDES) permit or by a state permit program. New York’s State Pollutant Discharge Elimination System (SPDES) program is an approved program with permits issued in accordance with title 8 of Article 17 of the Environmental Conservation Law (ECL). The Department regulates stormwater in accordance with ECL Section 17-0808. Pursuant to ECL section 70-0117(6) and 6 NYCRR 750-1.21(b), the Department issues a SPDES general permit to cover discharges of stormwater to surface waters of the State. The current version of the MS4 general permit is GP-0-15-003.

Background

Due to several factors explained more in this section of the fact sheet, it has been over 10 years since the Department’s MS4 general permit has been issued with significant changes. In 2010, several environmental groups filed a petition under Article 78 of the New York Civil Practice Laws and Rules challenging GP-0-10-002. As the litigation was still in the appeals process when GP-0-10-002 was due for renewal in 2015, the Department issued GP-0-15-003, essentially unchanged from GP-0-10-002.

On October 30, 2016, more than 180 days prior to the expiration of GP-0-15-003 on April 30, 2017, the Department proposed to renew and modify GP-0-15-003 through publicly noticing the draft GP-0-17-002. Thus, GP-0-15-003 has been administratively extended under the New York State Administrative Procedure Act (SAPA) §401 and 6 NYCRR 621.11(l). In response to public request, the public notice and comment period for the draft GP-0-17-002 was extended from 30 days to 90 days. The Department estimated that it received over 2,000 comments. The Department considered all comments made on the draft GP-0-17-002 and made significant changes as detailed in a revised draft permit, GP-0-22-002, and this fact sheet. The Department is seeking comments on the draft GP-0-22-002 and fact sheet. Only comments received on the draft GP-0-22-002 and fact sheet will be considered and addressed in a responsiveness summary prior to finalization.

Once final, GP-0-22-002 will be effective for a five (5) year term.

Notes on this Fact Sheet

The draft GP-0-22-002 uses the term “MS4” to represent the small municipal separate storm sewer conveyance system, while “MS4 Operator” represents the person, persons, or legal entity that obtains coverage and is responsible for the operation of the MS4.

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1 A small MS4 is defined in 40 CFR 122.26(a)(1)(v), 122.26(b)(8), and 122.26(b)(16)-(19).
“MS4 Operator type” differentiates the organizational structure of the MS4 Operators,\(^2\) corresponding to implementation of the requirements in the draft GP-0-22-002.

The draft GP-0-22-002 also uses specific language to denote the responsibilities of the MS4 Operator in satisfying all parts of the general permit, as well as 40 CFR 122.26 and 122.34. The administrative responsibilities of the MS4 Operator, with respect to gaining and maintaining coverage under draft GP-0-22-002, are referred to as “terms and conditions” (e.g., submission of a Notice of Intent (NOI), maintaining coverage, and development of a Stormwater Management Program (SWMP) Plan). The draft GP-0-22-002 contains requirements for the MS4 Operator to meet the terms and conditions.

The minimum control measures (MCMs) specified within draft GP-0-22-002 are consistent with 40 CFR 122.34(a). The MCMs represent the non-numeric effluent limitations of the general permit to reduce the discharge of pollutants to the maximum extent practicable (MEP), protect water quality, and generally satisfy the Clean Water Act. The MS4 Operator must implement the “requirements” for each MCM, as specified in draft GP-0-22-002. The requirements include best management practices (BMPs).

COVID-19

On March 7, 2020, Governor Andrew Cuomo declared a State of Emergency for the State of New York in response to the growing number of cases of SARS-CoV-2, commonly referred to as COVID-19. The State of Emergency and the virus, declared as a pandemic by the World Health Organization, placed substantial burdens on the economy of local governments across the State. Many local governments shifted their priorities to addressing the pandemic. In response to the pandemic, and the associated municipal burdens, the Department delayed the public notice of draft GP-0-22-002 and proposes:

- Required electronic submissions for all forms unless meeting the requirements of a waiver; and
- Extended timeframes for compliance.

Basis of Permit

Phase II Remand Rule

In 2014, several environmental groups, many of which also challenged GP-0-10-002, petitioned the United States Court of Appeals for the Ninth Circuit to force the United States Environmental Protection Agency (USEPA) to make changes to the regulations governing small MS4s.\(^3\) Through resolution of that petition, on January 6, 2016, the USEPA proposed the Phase II Remand Rule, revising the small MS4 regulations. On

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\(^2\) Traditional land use, traditional non-land use, or non-traditional.

\(^3\) Environmental Defense Center, et al v USEPA, 344 F.3d 832 (9th Cir 2003).

Under the USEPA’s Comprehensive General Permit approach, detailed in the final Phase II Remand Rule, the permitting authority (in New York, that is the Department) must articulate, in sufficient detail, within the text of the general permit, what is required to meet the minimum statutory and regulatory requirements (i.e., MEP), and to ensure that the applicable requirements are enforceable and understandable to the MS4 Operator and the public. The stormwater management program (SWMP), developed by the MS4 Operator, would reflect the applicable requirements for the MCMs contained in the general permit. Under the Comprehensive General Permit approach, the notice of intent (NOI) will only serve as a notice of the intention of the MS4 Operator to gain coverage to discharge in accordance with the general permit and would not contain any requirements specific to compliance with the general permit.

In anticipation of developing a general permit to comply with the Comprehensive General Permit approach, and potential impacts to MS4 Operators, the Department established a subcommittee to advise the Department staff on contemplated changes for the draft renewal of GP-0-15-003. This subcommittee consisted of representatives of MS4 coalitions, non-traditional MS4s, state-wide agencies, watershed protection committees, and environmental groups.

In the fall of 2018, after the conclusion of the public notice and comment period on the draft GP-0-17-002, the Department engaged in an expanded version of the subcommittee, referred to as the MS4 Stakeholder Workgroup, to provide feedback on areas of the draft GP-0-17-002 where the Department received a substantial amount of comments. These comments, both from MS4 Operators and environmental groups, identified areas of the draft GP-0-17-002 where more specificity was needed to meet the Comprehensive General Permit approach. Potential options were discussed with the MS4 Stakeholder Workgroup for these areas. Recommendations were incorporated into the draft GP-0-22-002 when there was a consensus among the MS4 Stakeholder Workgroup members or to reflect the best professional judgment of the Department where there was no consensus.

In conformance with the Comprehensive General Permit approach and 40 CFR 122.28(d), the draft GP-0-22-002 contains all the terms and conditions, MCMs, and related requirements. This includes responsibilities of the MS4 Operator, such as specific tasks, BMP design requirements, performance requirements, schedules for implementation and maintenance, and frequency of actions.

The Phase II Remand Rule also changed 40 CFR 122.34(a), requiring “terms and conditions that satisfy the requirements of this section must be expressed in clear,
specific, and measurable terms.” The USEPA developed model permit language for what is “clear, specific, and measurable” and compiled several examples where small MS4 general permits have already included requirements that would be consistent with the Phase II Remand Rule.

In drafting GP-0-22-002, the Department identified areas of GP-0-15-003 and the draft GP-0-17-002 where additional clarity or specificity was needed to meet the Phase II Remand Rule and consulted with the following USEPA guidance:

- MS4 Permit Improvement Guide;\(^5\)
- MS4 General Permit Compendium: Examples of Six Minimum Control Measure Provisions;\(^6\)
- Municipal Separate Storm Sewer System Permits—Post-Construction Performance Standards & Water Quality-Based Requirements: A Compendium of Permitting Approaches;\(^7\) and
- Center for Watershed Protection’s guide on Illicit Discharge Detection and Elimination (IDDE): A Guidance Manual for Program Development and Technical Assistance.\(^8\)

**Maximum Extent Practicable (MEP)**

Since 2003, the MS4 General Permit has required MS4 Operators to achieve MEP. The USEPA views the MEP standard as an iterative process; that is, MEP should continually adapt to current conditions and the effectiveness of BMP implementation. To satisfy the Phase II Remand Rule and meet MEP, the draft GP-0-22-002 provides specific requirements, timeframes, and methodologies, building upon previous permit requirements. Further discussion of the issues can be found under Major Topics Identified with Draft GP-0-17-002. The draft GP-0-22-002 requires that MS4 Operators must: 1) track information collected through implementation of the BMPs; 2) analyze this information, identify trends, patterns, and common problems; and 3) adjust the BMPs in the SWMP accordingly to improve the SWMP effectiveness in protecting water quality. For example, draft GP-0-22-002 requires MS4 Operators to collect and track information on illicit discharges and evaluate that information annually. Based on the annual evaluation of the SWMP Plan, the MS4 Operator may choose to conduct additional public education (e.g., distribution of flyers to residents about the illicit discharge) or

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outreach (e.g., stenciling “Dump no waste, drains to waterway” on catch basins tributary to where the illicit discharges were found) to provide a clear message and prevent future illicit discharges at the source.

**Major Topics Identified with Draft GP-0-17-002**

Through the public notice and comment period on draft GP-0-17-002, as well as the Stakeholder Workgroup and outreach, the Department received feedback from municipal leaders, elected officials, state-wide agencies, non-traditional MS4 Operators, coalition leaders, environmental groups, and the general public. This feedback was considered in development of the draft GP-0-22-002. Some of the major topics raised regarding draft GP-0-17-002 included:

**Permit Flexibility:** MS4 Operators commented that the draft GP-0-17-002 included more prescriptive requirements than what was previously included in previous iterations of the MS4 general permit. Therefore, MS4 Operators requested that the Department make changes to enable them to use their best professional judgment in implementing water quality protection procedures that are appropriate to the level of development, financial resources, and priority water quality conditions of their communities. To the contrary, the USEPA and environmental groups believed the changes made in the draft GP-0-17-002 satisfied the Phase II Remand Rule.

**Allocation of Resources:** MS4 Operators commented that the draft GP-0-17-002 did not appropriately consider resources necessary to comply with the general permit terms and conditions. According to their comments, the draft GP-0-17-002 would require significant resources over and above what is feasible for municipal operations budgets. The MS4 Operators also indicated much of the draft GP-0-17-002 required additional efforts and personnel resources for tracking and reporting rather than allocation of funds to stormwater management and system maintenance to improve water quality. Conversely, environmental groups commented that the provisions introduced in the draft GP-0-17-002 must be fully implemented regardless of necessary resources.

**Exceedance of Maximum Extent Practicable (MEP):** The commenters all acknowledged that the Department must ensure the reduction of pollutants to the MEP, while also complying with the Phase II Remand Rule. However, MS4 Operators stated that available surface water quality data, waterbody assessments, and pollutant load modeling were insufficient to justify conditions in the draft GP-0-17-002, and, as a result, the draft GP-0-17-002 exceeded the MEP. To the contrary, environmental groups submitted support for the concepts of the draft GP-0-17-002 but noted the areas which required further detail to satisfy the Phase II Remand Rule.

**Compliance Schedule:** In many instances in the draft GP-0-17-002, MS4 Operators commented that time frames given for implementation of the conditions were unrealistic and unachievable. MS4 Operators requested that the Department consider the difficulties in simultaneously achieving deliverables for MS4 Operators, while preparing budgets, plans, and securing board approvals before implementation. On the other hand, environmental groups noted that the draft GP-0-17-002 failed to comply with legal
requirements for compliance schedules by neglecting to include interim requirements for compliance items that extend more than nine months into the future.

**Department Response:** For topics not covered above, the Department inferred silence as support for the proposed conditions of the draft GP-0-17-002. Significant changes to address the major topics identified above have been made, though, in response to the public input on the draft GP-0-17-002, resulting in the draft GP-0-22-002. For comments received during public review of the draft GP-0-22-002, a response to comments will be issued with the final GP-0-22-002. In that response to comments, the Department will only be responding to comments received on the draft GP-0-22-002; the Department will not be responding to comments received on the draft GP-0-17-002. The Department considered the comments received on the draft GP-0-17-002 when developing the draft GP-0-22-002 and changes in response are further explained in this draft fact sheet. Therefore, if the commenter feels as though a comment on the draft GP-0-17-002 was not addressed in the draft GP-0-22-002, a new comment will need to be submitted.

**Electronic Submissions**

On October 22, 2015, the USEPA published the NPDES Electronic Reporting Rule (eRule), which required MS4 Operators to submit NOIs and reports electronically to the Department beginning December 21, 2020. Since then, the USEPA finalized the eRule Phase 2 extension of the NPDES eRule giving MS4 Operators until December 21, 2025 to comply with the eRule. To comply with the eRule, GP-0-22-002 requires electronic reporting using nForm which is the format acceptable to the Department (6 NYCRR 750-2.5(e)), unless a MS4 Operator meets the requirements for a waiver (40 CFR 127.15).

In accordance with 40 CFR 127.16(a) and 127.24, the draft GP-0-22-002 requires electronic submission of the notice of intent (NOI) and all other reports (e.g., annual reports, interim progress certifications, and interim progress reports). Electronic submission of the NOI and all other reports is consistent with the intent of 40 CFR Part 127 and 6 NYCRR 750-2.5(e). Paper submittal of an NOI and all other reports will only be allowed after a properly completed waiver has been submitted to the Department. Where a MS4 Operator meets the requirements for a waiver (40 CFR 127.15), the Department’s Waiver must be used.

The electronic reporting requirements in draft GP-0-22-002 are the same as those in draft GP-0-17-002. GP-0-15-003 does not contain electronic reporting requirements as it was issued before the eRule.

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Timeframes for Compliance

GP-0-15-003 included timeframes within the permit for requirements to be completed but did not include that information in table format. The draft GP-0-17-002 introduced the use of a table to better organize these timeframes and permit requirements contained within that draft general permit. The draft GP-0-22-002 removed the table, which summarized the timeframes to complete permit requirements, but continues to include timeframes for the completion of permit requirements embedded throughout the draft general permit. The table was removed because, while some permit requirements have a fixed timeframe, other permit requirements are dependent on other activities (e.g., updating the construction site inventory within thirty (30) days of when construction projects are approved). As part of the MS4 Toolbox on the Department website, there is now a Compliance Items Summary tool presented as a table for the fixed timeframe permit requirements. Please note that the summary table is a tool and the permit conditions control if there are any discrepancies. Any changes to the timeframes for specific permit requirements found in the draft GP-0-22-002 are explained in the corresponding parts of the fact sheet. The timeframes in the permit are designed to complete requirements in the shortest time reasonable in accordance with 6 NYCRR 750-1.14.

Obtaining Permit Coverage (Part II. of the draft GP-0-22-002)

The requirements in draft GP-0-22-002 to obtain coverage are generally the same as those in GP-0-15-003 and draft GP-0-17-002.

In accordance with 40 CFR 122.33(b), 40 CFR 122.28(b)(2)(ii), and 6 NYCRR 750-1.21(d)(1), all MS4 Operators must submit an NOI to obtain coverage under the general permit. For newly designated MS4 Operators, the deadline to submit a complete eNOI is 180 days from written notification from the Department. In the eNOI, the newly designated MS4 Operator certifies that the MS4 Operator agrees to develop the SWMP in accordance with the timeframes in the general permit and certifies that they have read and understand the requirements of GP-0-22-002. MS4 Operators continuing coverage must submit a complete eNOI to the Department thirty (30) days prior to the effective date of GP-0-22-002. In the eNOI, the MS4 Operators continuing coverage certifies that they have read and understand the requirements of GP-0-22-002 and will update the SWMP to meet GP-0-22-002 in accordance with the timeframes in the general permit.

If the MS4 Operator is newly designated, GP-0-22-002 coverage is effective sixty (60) days from the submission of the complete eNOI. If the MS4 Operator is continuing coverage, GP-0-22-002 coverage is effective sixty (60) days from EDP. MS4 Operators are not required to publicly notice their permit coverage because the draft GP-0-22-002 follows the Comprehensive General Permit approach. In accordance with 40 CFR 122.34(a)(1), the draft GP-0-22-002 provides newly designated MS4 Operators time to fully comply with the conditions of the permit and to implement necessary BMPs, based on the date of their coverage.
Reporting (Part V.B. of the draft GP-0-22-002)

The annual reporting requirements in draft GP-0-22-002 are in accordance with 40 CFR 122.34(d)(2) and are the same as those in GP-0-15-003 and draft GP-0-17-002. Newly designated MS4 Operators are required to submit their first annual report the year that authorization is granted only if authorization to discharge is granted on or before December 31 of that reporting year. However, to satisfy the Phase II Remand Rule, the GP-0-22-002 now defines the reporting period which runs from March 1 of the current year to February 28, February 29 if on a leap year of the following year as the Reporting Year.

Part IV.A.2. of draft GP-0-22-002 also continues to allow MS4 Operators to collaborate to comply with the general permit. Those available approaches are more fully discussed in Alternative Implementation Options of this Fact Sheet.

Interim Progress Certifications (Part V.3. of the draft GP-0-22-002)

Interim Progress Certifications were not previously included in GP-0-15-003 or draft GP-0-17-002 but are introduced in draft GP-0-22-002 to satisfy 6 NYCRR 750-1.14 and 40 CFR 122.34(d)(1). Interim Progress Certifications are the evaluation of the MS4 Operator’s compliance with the terms and conditions of the draft GP-0-22-002, including the effectiveness of the components of its SWMP, and the measured progress towards the interim requirements and timeframes in the permit, for elements of the permit which are required to be completed with a date beyond nine (9) months. The interim compliance items may be: 1) stand-alone compliance items (e.g., the development of a municipal facility inventory), or 2) completed in sequence to build up to a final compliance item (e.g., mapping components that are required to be mapped within three (3) years, with others required to be mapped within five (5) years, but, together, are used to develop a system map). The Interim Progress Certification form must be submitted electronically (Part V.B.1 of the draft GP-0-22-002) and semi-annually (Part V.B.3. of the draft GP-0-22-002). Submission of the annual report is not a substitute for submission of the Interim Progress Certification. For more information on this, see the Timeframes for Compliance section of this fact sheet.

TMDL Implementation Progress Reporting

Both GP-0-15-003 and the draft GP-0-17-002 included a requirement for MS4 Operators located within TMDL watersheds specified in Part IX. to submit Interim Progress Reports to demonstrate progress made towards pollutant load reductions as specified in their respective implementation plans. The draft GP-0-22-002 continues to include this requirement, however, the information previously required for submission in the Interim Progress Reports is now an addendum to the Interim Progress Certification form. This additional information is required to be submitted only by those MS4 Operators located within the watersheds listed in Table 3 of the draft GP-0-22-002.

Water Quality Standards

Unchanged from GP-0-15-003 and draft GP-0-17-002, the draft GP-0-22-002 includes required MCMs that will reduce the discharge of pollutants to the MEP. Parts I through
V and X of draft GP-0-22-002 apply to all MS4 Operators. The MCMs for traditional land use MS4 Operators are listed in Part VI; MCMs for traditional non-land use control MS4 Operators and non-traditional MS4 Operators are listed in Part VII. Parts III.B, VIII (impaired waters without an approved TMDL); and IX (impaired waters with an approved TMDL) list additional requirements within the MCMs for all MS4 Operators discharging to impaired waters.

In accordance with 6 NYCRR 750-2.1(b) and 40 CFR 122.34, the Department expects that compliance with the terms and conditions of the permit will reduce the discharge of pollutants to the MEP, to protect water quality, and to satisfy the appropriate water quality requirements of the CWA. This approach is consistent with the most recent Massachusetts and New Hampshire MS4 General Permits issued by the USEPA.

Storm Water Management Program (SWMP) (Part IV of the draft GP-0-22-002)

Stormwater Program Coordinator (Part IV.A.1. of the draft GP-0-22-002)

Although the GP-0-15-003 does not specifically include a requirement to designate a Stormwater Program Coordinator, it was implied in GP-0-15-003 that an individual would need to be designated to oversee cohesive implementation of the general permit. The draft GP-0-17-002 specifically required written designation of a Stormwater Program Coordinator who:

- is knowledgeable in the principles and practices of stormwater management, the requirements of the permit, and the SWMP;
- oversees the development, implementation, and enforcement of the SWMP;
- coordinates all elements of the SWMP to ensure compliance with the permit; and
- compiles all necessary information required by this permit and to implement the permit.

The draft GP-0-22-002 continues the proposal in draft GP-0-17-002 to require that the MS4 Operator designate, in writing, a Stormwater Program Coordinator whose responsibilities are also the same as those outlined in draft GP-0-17-002. To meet the Phase II Remand Rule, the draft GP-0-22-002 requires the MS4 Operator to identify the individual, by name and title, and ensure that individual meets the minimum qualifications/training requirements. The draft GP-0-22-002 also now requires that the Stormwater Program Coordinator receive four (4) hours of Department endorsed training once per permit term, to ensure that they have the tools necessary to reduce the discharge of pollutants to the MEP. It is possible that the Stormwater Program Coordinator fulfills another role in addition to the Stormwater Program Coordinator.

Alternative Implementation Options (Part IV.A.1. of the draft GP-0-22-002)

In accordance with 40 CFR 122.33(b)(1)(i) and 122.35, MS4 Operators may opt to enter into agreements with other MS4 Operators to complete specific SWMP components included in the draft GP-0-22-002 (e.g., implementation of MCM 6 BMPs, such as maintenance of roads, removal of snow, cleaning of storm sewer systems, sweeping of
streets, etc.). An MS4 Operator may choose to enlist the services of other MS4 Operators, businesses, Regional Stormwater Entities (RSE), or coalitions of MS4 Operators. This approach is unchanged from GP-0-15-003 and draft GP-0-17-002 and provides a cost-effective means of development, implementation, and enforcement of the SWMP components through cooperative efforts where resources can be shared, and duplication of effort is avoided. MS4 Operators are encouraged to form and utilize the Alternative Implementation Options whenever possible.

**SWMP (Part IV. of the draft GP-0-22-002)**

Pursuant to 40 CFR 122.34(b)(2)(ii) and 122.34(a)(2), the draft GP-0-22-002 continues to require MS4 Operators to develop, implement, and enforce a SWMP to reduce the discharge of pollutants to the MEP, that may enter into and be discharged from their MS4. The SWMP may involve coordination between several departments or agencies (i.e., some tasks may need to be completed by the department of public works, administrative staff, parks and recreation, etc. staff). The SWMP provides the framework for compliance with the general permit. Although not a new general permit requirement, to meet the Phase II Remand Rule, Part IV.B. of the draft GP-0-22-002 now specifically states that the SWMP must be adjusted within the parameters of the general permit, as new information becomes available, to best address water quality issues and reduce the discharge of pollutants to the MEP. The SWMP is a consolidation of all of the MS4 Operator’s relevant ordinances or other regulatory requirements, as well as the description of all programs and procedures (including standard forms to be used for reports and inspections) that will be implemented and enforced to comply with the general permit.

**SWMP Plan (Part IV.B. of the draft GP-0-22-002)**

In accordance with 40 CFR 122.34(a) and (b), and Part IV of the draft GP-0-22-002, the MS4 Operator is required to develop a written SWMP Plan that describes how the MS4 Operator will meet the requirements in the general permit to reduce the discharge of pollutants to the MEP. The SWMP Plan requirements in draft GP-0-22-002 includes small changes from GP-0-15-003 and draft GP-0-17-002 for better overall readability and clarity in requirements. GP-0-15-003 and the draft GP-0-17-002 required that the SWMP Plan be updated but did not specify a timeframe necessary to complete the update. In accordance with the Phase II Remand Rule, the draft GP-0-22-002 now requires that the SWMP Plan be updated annually by June 1st. For ease of administration, this June 1st date correlates the public review and comment period of the SWMP Plan and draft annual report. This allows for the SWMP Plan to be updated based on public feedback received on the draft annual report and the SWMP Plan.

The draft GP-0-22-002 continues to require that the SWMP Plan can be maintained as a hard copy or electronically, although electronic storage is recommended. In accordance with 6 NYCRR 750-2.5(c)(1), the MS4 Operator must keep the SWMP Plan for at least five (5) years after it is generated. Throughout the draft GP-0-22-002, documentation that MS4 Operators must include in the SWMP Plan is identified. If there are any requirements that are not applicable to the MS4 Operator, the SWMP Plan must state that and include the rationale for that determination. This applies to all MS4
Operator types. Similarly, if there are requirements for Part VIII or Part IX of the draft GP-0-22-002 that do not apply to the MS4 Operator, the SWMP Plan must state that and include the rationale for that determination. As part of the MS4 Toolbox on the Department website, there is now a SWMP Plan Components tool presented as a table.

**Mapping (Part IV.D of the draft GP-0-22-002)**

For this section of the fact sheet, mapping is broken out into the following sub-sections:

- a. Background
- b. Comprehensive System Map
- c. Mapping in Phases
- d. Implementation
- e. Mapping using GIS

**a. Background:** Pursuant to 40 CFR 122.34(b)(3)(i)(A), GP-0-15-003 required MS4 Operators to map the location of their outfalls and preliminary sewershed(s). In that permit, these requirements were included under MCM 3. In the draft GP-0-17-002, all mapping requirements were moved to a mapping section of the permit. To allow for greater accuracy in mapping, and to reflect changes in technology over the past decade, the draft GP-0-17-002 proposed to require the location of outfalls to be updated where necessary. Likewise, the draft GP-0-17-002 proposed to require updates to sewersheds as MS4 Operators collect more information about their MS4s. In addition, in order to develop a map which could serve as a planning tool for the entire permit, the draft GP-0-17-002 proposed to require that the map include: 1) mapped elements which are publicly available (e.g., names and location of all surface waters of the State), and 2) elements which the MS4 Operator would be required to map (e.g., catch basins). While the USEPA was in support of a comprehensive map, comments received on the draft GP-0-17-002 from the MS4 Operators indicated: 1) confusion with the list of elements to include in the map (e.g., MS4 Operators thought they would be responsible for mapping surface waters of the State because the draft GP-0-17-002 grouped all the mapping elements together), and 2) the mapping requirements were excessive.

**Comprehensive System Map:** The Department, as well as the MS4 Stakeholder Workgroup representatives, believe a comprehensive system map: 1) is necessary to facilitate a clear understanding of the MS4; and 2) serves as a planning tool, allowing for prioritization of efforts geared towards improving water quality and increases efficiency of program implementation. Mapping is the foundation of an MS4 Operator’s proper implementation of their SWMP.

The draft GP-0-22-002 builds upon GP-0-15-003 and the draft GP-0-17-002 by requiring MS4 Operators to develop and maintain a comprehensive system map that gives geographical representation to multiple elements of the SWMP. Part IV.D. of the draft GP-0-22-002 continues to include all mapping components in the mapping section of the draft GP-0-17-002. In response to the comments on the draft GP-0-17-002, the draft GP-0-22-002 clearly notes which data elements
are publicly available (i.e., mapped components which MS4 Operator has access to and do not need to map themselves). Table 1 includes sources MS4 Operators can use to find, download, and/or view the publicly available GIS data.

Table 1. Sources of publicly available GIS data.

<table>
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<tr>
<th>Dataset</th>
<th>Available to Download GIS Data from the NYS GIS Clearinghouse (<a href="http://gis.ny.gov/">http://gis.ny.gov/</a>)</th>
<th>Available to View on the DECinfo Locator (<a href="https://gisservices.dec.ny.gov/gis/dil/">https://gisservices.dec.ny.gov/gis/dil/</a>)</th>
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<td><a href="http://gis.ny.gov/gisdata/inventories/bowner.cfm">http://gis.ny.gov/gisdata/inventories/bowner.cfm</a></td>
<td>County (need to search by county, as well)</td>
</tr>
<tr>
<td>Roads</td>
<td><a href="http://gis.ny.gov/gisdata/inventories/details.cfm?D">http://gis.ny.gov/gisdata/inventories/details.cfm?D</a> SID=932</td>
<td>Statewide  Yes (base map option)</td>
</tr>
<tr>
<td>Topography</td>
<td><a href="http://gis.ny.gov/gateway/mg/nysdop/download.cfm">http://gis.ny.gov/gateway/mg/nysdop/download.cfm</a></td>
<td>County  Yes (base map option)</td>
</tr>
</tbody>
</table>

*a Land use is used to determine the potential of pollutants to be discharged through the MS4. The various land uses listed in the draft GP-0-22-002 matches the land uses listed on the CWP ORI field sheet.

b. Mapping in Phases: Unlike the GP-15-003 and the draft GP-0-17-002, the draft GP-0-22-002 organizes information to be included in the map into two phases for completion. Phase I includes mapping elements which either 1) provide foundational information that will be used for later permit requirements (e.g.,
focus areas) or 2) had permit requirements from previous iterations of the MS4 GP pertain to them (e.g., municipal facilities). Phase II includes mapping elements which either 1) connect mapping elements in Phase I (e.g., pipes) or 2) require more time for the MS4 Operator to collect (i.e., privately-owned stormwater management practices). This phased approach satisfies the Phase II Remand Rule and allows MS4 Operators to reduce the discharge of pollutants to the MEP. Although not required by the draft GP-0-22-002 and not necessary to reduce the discharge of pollutants to the MEP, inclusion of standard base map data (e.g., municipal boundaries, existing watershed boundaries, etc.) may create a more robust and functional map.

c. **Implementation:** The Department recognizes that some requirements of the MCMs may be helpful to be done prior to, or simultaneous with, the mapping requirements even though the requirements of the MCMs have later compliance deadlines. MS4 Operators may elect to complete certain tasks sooner than the required timeframes in draft GP-0-22-002. For example, as written in the Part IV.D.2.a. draft GP-0-22-002, mapping of municipally owned post-construction stormwater management practices (SMPs) is a requirement under Phase I of mapping and is to be completed within three years of the effective date of the permit (EDP). Pursuant to Part VI.E.2.a. and Part VII.E.2.a. of the draft GP-0-22-002, MCM 5 requires that an MS4 Operator develop and maintain a complete inventory of municipally owned post-construction SMPs. This requirement is to be completed within five years of the EDP. The compliance deadline for the complete inventory of municipally owned post-constructions SMPs is later than the mapping for those same post-construction SMPs because the inventory includes some information which may be more difficult to obtain (e.g., reason for the post-construction SMP). Although not required by draft GP-0-22-002 and not necessary to reduce the discharge of pollutants to the MEP, a preliminary inventory of all municipally owned post-construction SMPs may streamline mapping those features.

Additionally, although also not required by draft GP-0-22-002 and not necessary to reduce the discharge of pollutants to the MEP, an MS4 Operator may decide to include, as attributes, all the required inventory information while mapping so the information is recorded in one location and has a geographic context (e.g., post-construction SMP inventory information to be included as attributes of mapped post-construction SMPs in the system map). Any opportunity to collect mapping information simultaneously, regardless of the phase of mapping, will alleviate duplicative efforts by the MS4 Operator for future mapping timeframes. For example, stormwater structures (e.g., catch basins and manholes) and municipally owned post-construction SMPs can be mapped simultaneously and within three years of the effective date of the permit, particularly if they are in close proximity to each other. Although not required by the draft GP-0-22-002 and not necessary to reduce the discharge of pollutants to the MEP, MS4 Operators with adjacent MS4s could share information to satisfy mapping requirements.
d. Mapping using Geographic Information Systems (GIS): As discussed in the MS4 Stakeholder Workgroup, it is expected that the complexity and size of the MS4 will drive the format (electronic or hard copy) necessary for the MS4 map. More complex systems will likely benefit from electronic geographic information systems (e.g., GIS) to maintain information, while paper maps may be sufficient for smaller, less complex systems. The draft GP-0-22-002 does not specify the format for the MS4 map but does require that the map demonstrate a clear understanding of the MS4. However, in accordance with Parts VIII and IX of the draft GP-0-22-002, MS4 Operators discharging to impaired waters must complete MS4 mapping in electronic GIS format because completing these permit requirements without a digital map is not practical.

**Adequate Legal Authority (Part IV.E. of the draft GP-0-22-002)**

The legal authority requirements in draft GP-0-22-002 are the same as those in GP-0-15-003 and draft GP-0-17-002. To satisfy 40 CFR 122.34(b)(3)(i)(B), the draft GP-0-22-002 continues to require MS4 Operators to develop and maintain adequate legal authority to control how the MS4 is used and to prohibit non-stormwater discharges. To satisfy 40 CFR 122.34(b)(4)(i)(A) and 40 CFR 122.34(b)(5)(i)(B), the draft GP-0-22-002 continues to require MS4 Operators to develop and maintain adequate legal authority to ensure that construction activities are effectively controlled and include post-construction runoff controls for new development and redevelopment projects with proper operation and maintenance.

The Department recognizes that traditional MS4 and a non-traditional MS4 will have different legal authority available to them. Non-traditional MS4 Operators often cannot pass “ordinances” or may not have enforcement authority like a typical municipality, so legal authority may consist of other mechanisms such as policies, standards, or specific contract language. Although these differences exist, all MS4 Operators must have the legal authority to develop, implement, and enforce its SWMP. Part IV.E of the draft GP-0-22-002 provides the details for the legal authority required for the various types of MS4 Operators. Specifically, useful for non-traditional and traditional non-land use MS4 Operators, the draft GP-0-22-002 continues to allow all MS4 Operators the ability to adopt a legal mechanism equivalent to the model local laws specified in Part IV.E.1.

**Enforcement Response Plan (Part IV.F. of the draft GP-0-22-002)**

To reduce the discharge of pollutants to the MEP, it is critical that the MS4 Operator have the authority to initiate a range of enforcement actions to address the variability and severity of noncompliance. Enforcement responses to individual violations must consider criteria such as: magnitude and duration of the violation, effect of the violation on the receiving water, compliance history of the operator, and good faith of the operator in compliance efforts. Particularly for construction sites, enforcement actions must be timely in order to be effective.

GP-0-15-003 required enforcement measures for violations which were found within the individual MCM sections of the permit. The requirement for MS4 Operators to develop
and implement an Enforcement Response Plan (ERP) was introduced in draft GP-0-17-002 and continues to be included in draft GP-0-22-002. The enforcement measures for violations in GP-0-15-003 and the ERP requirements of the draft GP-0-17-002 have been simply consolidated in the draft GP-0-22-002 to facilitate implementation and to satisfy the Phase II Remand Rule. The ERP must address repeat and continuing violations through progressively stricter responses (i.e., escalation of enforcement) as needed to achieve compliance with the general permit. Inclusion of an ERP in the general permit received positive feedback in the public comment period and within the MS4 Stakeholder Workgroup.

**Minimum Control Measures (MCMs) (Part VI and Part VII of the draft GP-0-22-002)**

The draft GP-0-22-002 includes requirements that ensure MS4 Operators develop\(^{11}\) and implement, or continue to implement, the six MCMs during the permit term. The six MCMs are required in 40 CFR 122.34 and are the same as those in GP-0-15-003 and the draft GP-0-17-002; however, there are changes to the permit requirements as noted below under the specific MCM. Many of the changes were made in response to concerns with the draft GP-0-17-002 identified by the MS4 Operators.

**“Programs:”** The draft GP-0-22-002 continues to include permit requirements for monitoring locations inspection and sampling, illicit discharge track down, illicit discharge elimination, construction oversight, post-construction SMP inspection and maintenance, municipal facilities, municipal operations, and catch basin inspection. However, to satisfy the Phase II Remand Rule and reduce the discharge of pollutants to the MEP, these requirements have been re-organized and presented as “programs” in the draft GP-0-22-002. The following list of permit requirements applies to all of those “programs:”

1. Procedures which will be used to complete the task, including any timelines and documentation needed;
2. Training on procedures for a certain task;\(^{12}\)
3. Documenting the names/titles and contact information for the people who have completed the training; and
4. Updating procedures, as needed, after the annual evaluation of the SWMP.

For example, in the draft GP-0-22-002, MCM 3 includes an illicit discharge track down program. The illicit discharge track down program includes:

1. Procedures used for illicit discharge track down;
2. Training on how to complete illicit discharge track downs;
3. Documentation of the individuals who have been trained to complete the track downs; and

\(^{11}\) A definition for the word “develop” was added to the draft GP-0-22-002 to clarify permit requirements for MS4 Operators with either continuing coverage or a newly designated entity.

\(^{12}\) The Department understands there are variations between municipal facilities which may result in varying trainings for personnel. It is up to the MS4 Operator to provide the appropriate training based on responsibilities. Additionally, this training could simply consist of providing the procedures used to complete a certain task to the individual responsible for completing the task.
4) Updating illicit discharge track down procedures, as a result of the annual evaluation of the SWMP.

**Prioritization:** Similarly, for ease of implementation by the MS4 Operators, the draft GP-0-22-002 re-organized the permit requirements for the prioritization of monitoring locations, construction sites, and municipal facilities. The following list of permit requirements applies to all these prioritizations:

1) Criteria used for the prioritization;
2) The requirement to prioritize previously unprioritized permit components; and
3) The requirement to update the prioritizations in the inventory annually.

For example, in the draft GP-0-22-002, MCM 4 includes the prioritization of constructions sites. The construction site prioritization includes:

1) Construction sites prioritized based on a list of criteria;
2) The requirement to prioritize a construction site which was not previously prioritized/active, but becomes active; and
3) The requirement to update the prioritization of construction sites in the inventory annually.

**Corrective Actions:** The draft GP-0-22-002 introduced corrective actions to be taken in response to the detection of a pollutant source for the illicit discharge elimination program, municipal facility comprehensive site assessments (as part of the municipal facility program), and the catch basin inspection program. The draft GP-0-22-002 differentiates between these corrective actions based on the presence (e.g., illicit discharge elimination program and municipal facility comprehensive site assessments) or absence (e.g., catch basin inspection program) of an on-going source of pollution.

Where an on-going source of pollution is present, the draft GP-0-22-002 contains conditions consistent with the direction of 6 NYCRR 750-2.7(f), which is to “take all reasonable steps to minimize or prevent any discharge in violation of the permit.” Additionally, the draft GP-0-22-002 requires MS4 Operators to develop a schedule, to implement corrective actions for the illicit discharges and municipal facilities, within set timeframes. These timeframes are based on the severity of the permit violation and written as either: 1) “has a reasonable likelihood of adversely affecting human health or the environment,” or 2) “does not have a reasonable likelihood of adversely affecting human health or the environment.” The Department also recognizes that some corrective actions may be able to be completed expeditiously and efficiently, while others may require coordination of resources and municipal departments to accomplish. The language in the draft GP-0-22-002 is used specifically where there is an on-going source of pollution to reduce the discharge of pollutants to the MEP. The ability of the MS4 Operator to develop a schedule, within a set timeframe, to complete the corrective actions and implement the corrective actions satisfies the Phase II Remand Rule.

In the draft GP-0-22-002, where an on-going source of pollution is not present, timeframes for the completion of corrective actions are based on the severity of the issue (e.g., the amount of debris found in the catch basin sump). The Department chose this approach because, while there is not an on-going source of pollution, there is the
potential to become a source of pollution. The Department also recognizes that some corrective actions may be able to be completed before the required timeframes in the draft GP-0-22-002. The establishment of the timeframes to complete the corrective actions and implement the corrective actions satisfies the Phase II Remand Rule and reduces the discharge of pollutants to the MEP.

**MCM 1 – Public Education and Outreach Program (Part VI.A. and Part VII.A. of the draft GP-0-22-002)**

As required by 40 CFR 122.34(b)(1), GP-0-15-003 required implementation of a public education and outreach program to distribute educational materials to their community\(^\text{13}\) about the impacts of stormwater discharges on surface waters of the State and the steps that the public can take to reduce pollutants in stormwater runoff. The draft GP-0-17-002 included this requirement, but comments received during the public notice period indicated that there was confusion about where to conduct the educational programs, whom the programs would be for, and what the educational topics should be. To satisfy the Phase II Remand Rule and reduce the discharge of pollutants to the MEP, the draft GP-0-22-002 provides clearer language and requires MS4 Operators to develop and implement an education and outreach program for the public to increase awareness of pollutant generating activities and behaviors.

**Focus Areas (Part VI.A.1.a. and Part VII.A.1.a. of the draft GP-0-22-002):** Both GP-0-15-003 and the draft GP-0-17-002 required the MS4 Operator to identify the areas where pollutant generating activities are occurring in order to target education and outreach efforts towards behaviors and activities that pose the greatest risk of pollutants discharging through the MS4. However, both permits lacked clarity in the connection between the identified areas (then referred to as “areas of concern”) and subsequent permit requirements. The draft GP-0-22-002 continues to include the requirement to identify specified areas, but the terminology has been updated from “areas of concern” to “focus areas.” The draft GP-0-22-002 includes steps for an MS4 Operator to determine their focus areas (s), target audience (s), and educational topic (s), in this order. This approach satisfies the Phase II Remand Rule and reduces the discharge of pollutants to the MEP.

**Illicit Discharge Education (Part VI.A.1.d. and Part VII.A.1.d. of the draft GP-0-22-002):** In accordance with 40 CFR 122.34(b)(3)(i)(D), GP-0-15-003 and the draft GP-0-17-002 required illicit discharge education and/or outreach under MCM 3, illicit discharge prevention. The draft GP-0-17-002 called for a more proactive illicit discharge prevention program to be developed within MCM 3 with specific information required to be made available to the public on illicit discharges and how to report them to meet the Phase II Remand Rule. In the draft GP-0-22-002, this requirement has been moved to MCM 1 and minor edits for clarity have been made. By including all education and outreach requirements under MCM 1, MS4 Operators

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\(^\text{13}\) Non-Traditional and Traditional Non-Land Use MS4 Operators should consider their public/community to be employees (i.e. staff, faculty), user population/visitors, clients, customers, students, tenants, and contractors or developers working for the MS4 Operator.
will more easily be able to develop a comprehensive education and outreach program to reduce the discharge of pollutants to the MEP.

**Program Implementation and Frequency (Part VI.A.2. and Part VII.A.2. of the draft GP-0-22-002):** GP-0-15-003 required an on-going education and outreach program without a specified frequency of implementation. The draft GP-0-17-002 required MS4 Operators to deliver educational messages annually to each target audience based on the areas of concern. Comments received during the public comment period and the MS4 Stakeholder Workgroup indicated that the frequency of implementation of educational messages exceeded the MEP.

In response to comments and to satisfy the Phase II Remand Rule, in the draft GP-0-22-002, for each target audience within each focus area, the MS4 Operator is responsible for delivering at least one educational message per permit term. For example, in a residential area, the target audience would be the residents and the MS4 Operator might choose to educate the residents on the proper use of fertilizers. The education and outreach program can be implemented in a variety of ways depending on the focus area, target audience, and/or educational goals. After mapping the focus areas, MS4 Operators can more effectively define the target audiences for each area and develop targeted educational goals for the respective audience. Table 2 includes examples of possible educational topics that can be used for the target audiences in appropriate focus areas.
Table 2. Examples of possible educational topics to use for target audiences.

<table>
<thead>
<tr>
<th>Educational Topic</th>
<th>Target Audience</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Residents</td>
</tr>
<tr>
<td>General stormwater information</td>
<td>X</td>
</tr>
<tr>
<td>Pet and other animal waste</td>
<td>X</td>
</tr>
<tr>
<td>Lawn maintenance</td>
<td>X</td>
</tr>
<tr>
<td>Illicit discharges</td>
<td>X</td>
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<tr>
<td>Disposal of household hazardous waste</td>
<td>X</td>
</tr>
<tr>
<td>Proper maintenance of septic systems</td>
<td>X</td>
</tr>
<tr>
<td>Litter generation</td>
<td>X</td>
</tr>
<tr>
<td>Proper disposal of swimming pool water</td>
<td>X</td>
</tr>
<tr>
<td>Stormwater management practices</td>
<td>X</td>
</tr>
<tr>
<td>Building maintenance and the use of detergents</td>
<td>X</td>
</tr>
<tr>
<td>Proper application of salt or other anti-icing materials and how to minimize their use</td>
<td>X</td>
</tr>
<tr>
<td>Material Storage</td>
<td>X</td>
</tr>
<tr>
<td>Proper management of waste materials and dumpster areas</td>
<td>X</td>
</tr>
<tr>
<td>Proper management of parking lot surfaces</td>
<td>X</td>
</tr>
<tr>
<td>Vehicle fluid changing and maintenance</td>
<td>X</td>
</tr>
<tr>
<td>Proper erosion and sediment control</td>
<td>X</td>
</tr>
<tr>
<td>Requirements for coverage under the SPDES General Permit for Stormwater from Construction Activities, GP-0-20-001 (CGP)</td>
<td>X</td>
</tr>
<tr>
<td>Requirements for coverage under the SPDES Multi-Sector General Permit</td>
<td>X</td>
</tr>
</tbody>
</table>
Table 2 is not exhaustive but is an explanation of the requirements of the draft GP-0-22-002. Educational topics may vary between MS4 Operators based on their SWMP. Sample education guidance materials are referenced on the Department’s webpage. Other state pollution education materials can also be found and utilized here: https://cfpub.epa.gov/npstbx/MediaCampaign.cfm, https://www.epa.gov/npdes/national-menu-best-management-practices-bmps-stormwater-public-education, and https://www.epa.gov/trash-free-waters. As stated in Part VI.A.2.c. and Part VII.A.2.c. of the draft GP-0-22-002, MS4 Operators are required to adjust their public education and outreach activities directed at reducing specific pollutants from pollutant sources specific to their regulated area.

**MCM 2 – Public Involvement/Participation (Part VI.B. and Part VII.B. of the draft GP-0-22-002)**

GP-0-15-003 required MS4 Operators to include the public in the development and implementation of the SWMP. This requirement was continued in the draft GP-0-17-002 and again in the draft GP-0-22-002 with minor changes for clarity. As required by 40 CFR 122.34(b)(2)(i), MS4 Operators must develop and implement a program to involve the public in activities and decisions that relate to the issues of stormwater pollution. MS4 Operators must provide opportunities for public participation including: public noticing the draft annual report, providing an opportunity to comment, and informing the public of opportunities to become more involved. Citizens who take an active role in the decision-making process take ownership in the SWMP and, therefore, are more likely to adhere to the SWMP and to help facilitate the SWMP policies. Encouraging the public to frequently participate in a voluntary capacity can provide an economic benefit by maximizing resources of the MS4 Operators and can help to shorten compliance schedules. An involved public can be a valuable resource for detection of problems and public reports can be used to better focus the SWMP toward problem areas.

**Public Involvement/Participation (Part VI.B.1. and Part VII.B.1. of the draft GP-0-22-002):** GP-0-15-003 included a permit requirement to provide an opportunity for public involvement/participation in the development and implementation of the SWMP. The draft GP-0-17-002 built upon GP-0-15-003 and included the following list of possible stewardship activities an MS4 Operator could provide to satisfy this requirement:

1. Beach cleanups;
2. Wetland restorations;
3. Volunteer water quality monitoring;
4. Storm drain stenciling;
5. Conducting surveys;
6. Tree plantings;
7. BMP maintenance;
8. Adopt a highway/stream/lake/beach/catch basin; and
9. Educational activities including distribution of materials.

Comments received during the public comment period for the draft GP-0-17-002 suggested adding stewardship activities to the list. Although the Department agrees with the suggestion, the Department removed the list from the draft GP-0-22-002 because: 1) it is not exhaustive, and 2) attempting to create an exhaustive list may prove inadequate as new/different stewardship activities are developed. The draft GP-0-22-002 still requires an opportunity for public involvement/participation in the development and implementation of the SWMP, which could include stewardship activities.

Consideration of Public Input (Part VI.B.2.c. and Part VII.B.2.c. of the draft GP-0-22-002): Both GP-0-15-003 and the draft GP-0-17-002 required that the SWMP Plan be publicly available. In accordance with 40 CFR 122.34(b)(2)(ii), the draft GP-0-22-002 continues to include this requirement. Although GP-0-15-003 and the draft GP-0-17-002 required that the MS4 Operator provide the SWMP Plan to the public, and, in essence, there would have been an opportunity for public comment, neither general permit included a specific requirement to allow the public to comment on the SWMP Plan. To satisfy the Phase II Remand Rule, the draft GP-0-22-002 includes a specific requirement for the already established opportunity for the public to comment on the SWMP Plan. For ease of administration, the draft GP-0-22-002 correlates the public review and comment period of the SWMP Plan with the requirements for public review and comment of the draft annual report. Public input on the SWMP Plan is necessary to provide adequate opportunity to the public for input on the SWMP so MS4 Operators can reduce the discharge of pollutants to the MEP.

MCM 3 – Illicit Discharge Detection and Elimination (Part VI.C. and Part VII.C. of the draft GP-0-22-002)

40 CFR 122.26(b)(2) defines an illicit discharge as any discharge to an MS4 that is not composed entirely of stormwater. The IDDE requirements of the draft GP-0-22-002 are in accordance with 40 CFR 122.34(b)(3)(i).

In accordance with 40 CFR 122.34(b)(3)(i), the IDDE program must include methods for prevention, detection, track-down, and elimination. The IDDE program in GP-0-15-003 largely focused the program on the mapping and inspection of outfalls, as well as the creation of procedures to track down and eliminate illicit discharges. These requirements were expanded in the draft GP-0-17-002 and maintained in a different organizational structure in the draft GP-0-22-002.

Comments received during the public comment period for the draft GP-0-17-002 indicated there was a lack of clarity and consistency between the draft GP-0-17-002 and the tools MS4 Operators use to implement their IDDE programs (e.g., Center for Watershed Protection Illicit Discharge Detection and Elimination: A Guidance Manual for Program Development and Technical Assistance, October 2004 (CWP
In response, the draft GP-0-22-002 identifies the necessary components of the IDDE program, satisfying the provisions of the Phase II Remand Rule. These changes also allow the MS4 Operators to reduce the discharge of pollutants to the MEP because there is coordination between permit requirements and the tools used to satisfy those permit requirements.

Additionally, several parts of the IDDE program have been reorganized within the draft GP-0-22-002. The legal authority requirements, found in MCM 3 of the GP-0-15-003 and the draft GP-0-17-002, have been moved to Adequate Legal Authority in the draft GP-0-22-002. For more on this, see the Adequate Legal Authority section of this fact sheet. Illicit discharge prevention, found in MCM 3 of GP-0-15-003 and the draft GP-0-17-002, has been moved to MCM 1 in the draft GP-0-22-002. For more on this, see the Illicit Discharge Education section of this fact sheet. Mapping of outfalls, found in MCM 3 of the GP-0-15-003, was moved to the mapping section of the draft GP-0-17-002 and continues to be found in the mapping section of the draft GP-0-22-002. For more on this, see the Mapping section of this fact sheet.

1. **Illicit Discharge Detection (Part VI.C.1. and Part VII.C.1. of the draft GP-0-22-002):** GP-0-15-003, the draft GP-0-17-002, and the draft GP-0-22-002 included permit components in accordance with 40 CFR 122.34(b)(3)(i)(C) and 6 NYCRR 750-1.13. The draft GP-0-22-002 builds upon the permit requirements in GP-0-15-003 and the draft GP-17-002 for illicit discharge detection to include: 1) public reporting of illicit discharges, 2) the description of monitoring locations, 3) an inventory of monitoring locations, 4) the prioritization of monitoring locations, and 5) the inspections and sampling of monitoring locations. The components of the program are described further below.

Both GP-0-15-003 and the draft GP-0-17-002 defined an outfall as the location where an MS4 discharges to either a surface water of the State or to another MS4. That definition of outfall was interpreted differently by MS4 Operators. As such, changes were made in response and to satisfy the Phase II Remand Rule. The draft GP-0-22-002 definition of “MS4 outfall” more closely reflects the definition of an “outfall” found in 6 NYCRR 750-1.2(a)(60), only including where an MS4 discharges to a surface water of the State. The draft GP-20-002 includes a separate definition of “interconnection” as the any point the MS4 Operator’s MS4 is discharging stormwater to another MS4 or private storm sewer system. The draft GP-0-22-002 also requires MS4 Operators to identify locations where stormwater is conveyed from a municipal facility to the MS4 Operator’s own MS4. In the draft GP-0-22-002, the locations, known as “monitoring locations,” include: a) MS4 outfalls, b)

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15 Previously defined as outfall in both GP-0-15-003 and the draft GP-0-17-002.

16 These locations were not identified in GP-0-15-003 or draft GP-0-17-002.
interconnections, and c) where stormwater is conveyed from a municipal facility to the MS4 Operator’s own MS4.¹⁷

Despite the changes in terminology, two things have not changed between GP-15-003 and the draft GP-0-22-002: 1) MS4 Operators have already completed inspections and sampling at MS4 outfalls, as defined in the draft GP-0-22-002, and 2) MS4 Operators have already completed inspections and sampling where the MS4 Operator’s MS4 is discharging stormwater to another MS4. Therefore, no additional requirements in the draft GP-0-22-002 apply to MS4 Operators in either situation.

Under the draft GP-0-22-002, as new permit requirements, MS4 Operators will have to conduct inspections and sampling at: 1) interconnections where the MS4 Operator’s MS4 is discharging stormwater to a private storm sewer system (as opposed to an MS4), and 2) locations where stormwater is conveyed from a municipal facility to the MS4 Operator’s own MS4.

a. **Public Reporting of Illicit Discharges (Part VI.C.1.a. and Part VII.C.1.a. of the draft GP-0-22-002):** Both GP-0-15-003 and the draft GP-0-17-002 required a “hotline” the public could use to report an illicit discharge. Comments received during the public comment period for the draft GP-0-17-002 indicated that MS4 Operators were concerned about costs associated with staffing for a dedicated hotline. The draft GP-0-22-002 continues to require a method for the public to report illicit discharges but offers an alternative to address the concern. To satisfy the Phase II Remand Rule, the draft GP-0-22-002: 1) gives the MS4 Operator the choice of using an email or phone number (with message recording capability) for implementation, and 2) provides a list of information to document for the report to satisfy this requirement. Although not required by the draft GP-0-22-002 and not necessary to reduce the discharge of pollutants to the MEP, the Department suggests that this email and/or phone number be for a pre-existing municipal staff member to avoid additional costs. Additionally, although not required by the draft GP-0-22-002 and not necessary to reduce the discharge of pollutants to the MEP, using the Stormwater Program Coordinator email and/or phone number for the reporting of illicit discharges would be helpful as the Stormwater Program Coordinator is the most capable of determining the follow-up procedures.

Lastly, the public reporting of illicit discharges has been moved to the illicit discharge detection section of MCM 3. By including all illicit discharge detection methods under the illicit discharge detection section of MCM 3, MS4 Operators will be able to develop and implement a comprehensive program to reduce the discharge of pollutants to the MEP.

¹⁷ MS4 outfalls and interconnections, as defined in the draft GP-0-22-002, can be found throughout the regulated area, including at a municipal facility. Locations where stormwater is conveyed from a municipal facility to the MS4 Operator’s own MS4 are 1) not MS4 outfalls or interconnections and 2) only found at municipal facilities.
b. **Description of Monitoring Locations (Part VI.C.1.b. and Part VII.C.1.b. of the draft GP-0-22-002):**

The descriptions of the monitoring locations are above, under Illicit Discharge Detection. The rationale for collectively calling these locations "monitoring locations" was so the permit could refer to one term consistently. By clarifying the definitions and mapping requirements for the monitoring locations in the draft GP-0-22-002, MS4 Operators will be able to reduce the discharge of pollutants to the MEP.

c. **Monitoring Locations Inventory (Part VI.C.1.c. and Part VII.C.1.c. of the draft GP-0-22-002):** Neither the GP-0-15-003 nor the draft GP-0-17-002 included a requirement to inventory the outfalls, although, in mapping and inspecting the outfalls, the MS4 Operators would have functionally inventoried the outfalls. To satisfy the Phase II Remand Rule, the draft GP-0-22-002 explicitly includes the requirement to inventory the monitoring locations. MS4 Operators who implemented GP-0-15-003 to reduce the discharge of pollutants to the MEP, including the use of the Center for Watershed Protection (CWP) ORI Sheet for outfall inspections, already have most of the information required for the inventory.

Creating an inventory is a simplified way to consolidate a large portion of data into one location, as opposed to the information being dispersed throughout field sheets (e.g., ORI Field Sheet). Additionally, the inventory is useful to have as a complete list of the monitoring locations before prioritization (Part VI.C.2.c. and Part VII.C.2.c. of the draft GP-0-22-002). Creating an inventory, as the draft GP-0-22-002 requires, allows MS4 Operators to reduce the discharge of pollutants to the MEP.

The inventory information for each monitoring location was designed to include information which may be the most useful based on the type of monitoring location (i.e., for an interconnection, it is unlikely that the location is/will be submerged in water, so that information is not required in the inventory). In the draft GP-0-22-002, specific information about the monitoring location is required in the inventory to satisfy the Phase II Remand Rule, and so MS4 Operators can reduce the discharge of pollutants to the MEP.

The inventory information required for each monitoring location differs as follows:

i. The inventory for interconnections requires a subset of inventory information compared to that for MS4 outfalls. Additionally, it includes one piece of information that is not included in the MS4 outfall inventory, “permit number for the MS4 Operator receiving discharge or private storm system.” This was added so the MS4 Operator can determine who they may need to contact in the instance of an illicit discharge.

ii. The inventory for locations where stormwater is conveyed from a municipal facility to the MS4 Operator’s own MS4 requires a smaller subset of inventory information compared to that for MS4 outfalls. This monitoring location has
the least inventory information because the discharge is going to the MS4 Operator’s own MS4 and additional information will be included in the inventory for that monitoring location (i.e., down drainage, the MS4 Operator will inventory, prioritize, and inspect either an MS4 outfall or interconnection).

Although not required by the draft GP-0-22-002 and not necessary to reduce the discharge of pollutants to the MEP, MS4 Operators could include the inventory information that is required for MS4 outfalls in the inventory for each of the other monitoring locations for ease of implementation.

d. Monitoring Locations Prioritization (Part VI.C.1.d. and Part VII.C.1.d. of the draft GP-0-22-002): The GP-0-15-003 did not include prioritization of outfalls. Criteria used to prioritize outfalls was introduced in the draft GP-0-17-002 so MS4 Operators could reduce the discharge of pollutants to the MEP. Comments received during the public comment period for the draft GP-0-17-002, and during the MS4 Stakeholder Workgroup, indicated that the criteria used to prioritize outfalls were excessive and required information that the MS4 Operators did not have readily available. Some of the criteria used to prioritize outfalls presented in the draft GP-0-17-002 has been removed in the draft GP-0-22-002. The following are explanations for why the criteria were removed in the draft GP-0-22-002:

i. One criterion for prioritizing an outfall as a high priority outfall under the draft GP-0-17-002 was that the outfalls meet the definition of “major outfall,” as defined in 40 CFR 122.26(b)(5)). To determine which outfalls were major outfalls, the MS4 Operators needed information on the size of the pipe of the outfalls, size of the drainage area to the outfalls, and land use draining to the outfalls. While under GP-0-15-003 the pipe size information was recorded for each outfall on the ORI sheet during outfall inspections, the drainage area and associated land use information was not required under a previous MS4 General Permit. Therefore, the MS4 Operators did not have that information in preparation for the prioritization criteria presented in the draft GP-0-17-002. The MS4 Operator must first have a map of the infrastructure conveying stormwater to the outfall to determine drainage area and land use, a permit requirement presented in the draft GP-0-17-002 that was not due to be completed until the end of the permit term.

ii. Another criterion for prioritizing an outfall as a high priority outfall under the draft GP-0-17-002 was that the outfalls service areas with “high illicit discharge potential," as determined by applying a list of screening factors identified in Table 14 of CWP 2004. Comments indicated issues with the screening factors, specifically that some information was not required to be collected under a previous MS4 General Permit (e.g., age of infrastructure greater than 50 years). Additionally, by applying the screening factors, MS4 Operators commented that most of their outfalls would be considered high priority, effectively invalidating the purpose of prioritizing.

The draft GP-0-22-002 continues to include criteria to prioritize monitoring locations; however, the criteria have been revised from the draft GP-0-17-002 and
are now based on: 1) the pollutant discharge potential (e.g., monitoring locations at high priority facilities), 2) the waterbody receiving the stormwater discharge (e.g., discharging to impaired waters), and 3) the report of citizen complaints. The criteria in the draft GP-0-22-002 require information that either: 1) was collected under a previous MS4 General Permit or 2) will be collected under GP-0-22-002 prior to the compliance deadline for the prioritization of monitoring locations. This approach allows the monitoring location prioritization requirements to satisfy the Phase II Remand Rule. Focused prioritization criteria are necessary to guide IDDE so MS4 Operators can reduce the discharge of pollutants to the MEP.

e. Monitoring Locations Inspection and Sampling Program (Part VI.C.1.e and Part VII.C.1.e. of the draft GP-0-22-002):

Inspections and Sampling Procedures (Part VI.C.1.e.i and Part VII.C.1.e.i. of the draft GP-0-22-002): The draft GP-0-22-002 continues to reference CWP 2004 as an option in establishing the methodology for conducting monitoring location inspections and sampling, the use of the ORI sheet, and the development of inspection and sampling procedures. To satisfy the Phase II Remand Rule the draft GP-0-22-002 now specifically uses terminology from the CWP 2004 ORI Sheet for determining the severity of illicit discharges and proper follow-up. For example, if a monitoring location inspection indicates a “suspect” illicit discharge, “suspect” being a term used to characterize the flow at a monitoring location on the ORI sheet, the MS4 Operator must initiate illicit discharge track down procedures. In this way, the draft GP-0-22-002 requirement correlates with the tool used by the MS4 Operators for permit implementation.

The draft GP-0-17-002 included a table of parameters to be sampled, “at all flowing outfalls with any physical indicator of an illicit discharge,” and their associated “action levels.” Comments received during the public comment period for the draft GP-0-17-002 indicated that this table was confusing in context with the rest of the draft permit language. The table was never intended as a permit requirement, but simply as guidance. To clarify, the table was removed in the draft GP-0-22-002.

Introduced in the draft GP-0-22-002, to satisfy the Phase II Remand Rule, the MS4 Operator must annually analyze data collected through public reporting of illicit discharges and through monitoring locations inspection and sampling to identify trends (e.g., problem areas). In response to this analysis, MS4 Operators must adjust their SWMP (e.g., increase education about a specific pollutant noticed during monitoring location inspections), thereby reducing the discharge of pollutants to the MEP.

Inspections and Sampling Frequency (Part VI.C.1.e.i.a and Part VII.C.1.e.i.a) of the draft GP-0-22-002): The GP-0-15-003, draft GP-0-17-002, and the draft GP-0-22-002 all include routine inspections used to detect illicit discharges in the MS4, as well as structural concerns (e.g., excessive debris build up). Under the
GP-0-15-003, an “outfall reconnaissance inventory” (i.e., inspection) of all outfalls had to be conducted once a permit term and MS4 Operators were directed to CWP 2004 for guidance on conducting the inspections. In certain instances, inspections of outfalls once every five (5) years was inadequate. In the draft GP-0-17-002, with the introduction of the prioritization of outfalls, outfall inspections were required at a frequency based on their prioritization (i.e., high priority outfalls would be inspected annually and low priority outfalls would be inspected once a permit term). The draft GP-0-17-002 continued to use CWP 2004 as a guidance document while also detailing some methodology for the inspection in the draft permit. Comments received during the public comment period for the draft GP-0-17-002, and during the MS4 Stakeholder Workgroup on the draft GP-0-17-002, indicated that the methods for inspection were confusing because terminology in the draft permit was different than that in CWP 2004 and the inspection frequency was: 1) excessive (some MS4 Operators even suggested less frequent inspections than what was required in GP-0-15-003), and 2) beyond the capabilities of the MS4 Operator’s staffing and budget, exceeding MEP.

In response to the comments, the draft GP-0-22-002 adjusted the inspection and sampling frequency of monitoring locations based on their prioritization. High priority monitoring locations will be inspected twice a permit term, separated by one year, and low priority monitoring locations will be inspected once a permit term. The Department understands that the number of monitoring locations and the amount of resources to complete inspections can differ greatly between MS4 Operators and between reporting years. Therefore, although not required by the GP-0-22-002 and not necessary to reduce the discharge of pollutants to the MEP, the MS4 Operator may find it helpful to distribute monitoring location inspections over the duration of the permit term, as opposed to postponing monitoring locations inspections until the year they are due to be complete. MS4 Operators may utilize citizen or environmental groups to monitor low priority monitoring locations.

The inspection frequency for monitoring locations in the draft GP-0-22-002 intentionally matches the inspection frequency of other permit components (e.g., both low priority monitoring locations inspection and low priority municipal facility comprehensive site assessments must be conducted once a permit term). This approach satisfies the Phase II Remand Rule and reduces the discharge of pollutants to the MEP. Although not required by the draft GP-0-22-002 and not needed to reduce the discharge of pollutants to the MEP, simultaneous implementation of these permit requirements increases efficiency.

Training (Part VI.C.1.e.ii. and Part VII.C.1.e.ii. of the draft GP-0-22-002): The GP-0-15-003 did not require training for personnel conducting outfall inspections. The draft GP-0-17-002 introduced a permit requirement for annual training for those conducting outfall inspections. Comments received during the public comment period for the draft GP-0-17-002, and during the MS4 Stakeholder Workgroup,
indicated that annual training was too frequent and unnecessary. To satisfy the Phase II Remand Rule and reduce the discharge of pollutants to the MEP, As the draft GP-0-22-002 1) continues to include a permit requirement to train those conducting monitoring location inspections, and 2) reduces the monitoring location inspections and sampling training frequency to once a permit term.

2. *Illicit Discharge Track Down Program (Part VI.C.2. and Part VII.C.2. of the draft GP-0-22-002):*
The draft GP-0-17-002 added specific requirements for the program including: 1) training; 2) procedures; 3) progress tracking; and 4) time frames for initiating procedures. To satisfy the Phase II Remand Rule, the draft GP-0-17-002 refined the illicit discharge track down program proposed in the draft GP-0-17-002 by including: 1) a record of those who have received the illicit discharge track down training, and 2) an update/modification to the illicit discharge track down procedures based on the annual evaluation of the SWMP (e.g., shorten the time frame for initiating track down procedures for suspect discharges from five days to four days). As a result of this evaluation, MS4 Operators are reducing the discharge of pollutants to the MEP.

3. *Illicit Discharge Elimination Program (Part VI.C.3. and Part VII.C.3. of the draft GP-0-22-002):*
The draft GP-0-17-002 added specific requirements for the program including: 1) time frames for initiating procedures; 2) provisions for escalating enforcement and tracking of the enforcement process; 3) provisions to confirm the illicit discharge has been eliminated; and 4) an annual evaluation of timeframes to eliminate illicit discharges with identification of improvements. To satisfy the Phase II Remand Rule, the draft GP-0-22-002 refined the illicit discharge elimination program proposed in the draft GP-0-17-002 by including: 1) illicit discharge elimination procedures; 2) provisions for training on the MS4 Operator’s illicit discharge elimination procedures; 3) a record of those who have received the illicit discharge elimination training; 4) how progress with illicit discharge elimination will be documented; and 5) an update/modification to the illicit discharge elimination procedures based on the annual evaluation of the SWMP. As a result of this evaluation, MS4 Operators are reducing the discharge of pollutants to the MEP.

**Background: Construction/Post-Construction Requirements**
As required by 40 CFR 122.34(b)(4)(i) and (5)(i), and similar to GP-0-15-003 and draft GP-0-17-002, the draft GP-0-22-002 requires the MS4 Operator to develop, implement, and enforce a program to reduce pollutants in any stormwater runoff to the small MS4 from construction activities that result in a land disturbance of greater than or equal to one acre. The requirements applied during construction.
activity are contained in MCM 4, and the requirements applied post-construction are included in MCM 5. The implementation of the construction site stormwater runoff control program promotes the proper planning and installation of post-construction SMPs, as well as reduces the discharge of pollutants to the MEP from construction related activities. To ensure this, the MS4 Operator must have proper legal authority to implement MCM 4 and MCM 5. The draft GP-0-22-002 continues to require that MS4 Operators provide this compliance oversight for applicable construction activities.\(^\text{18}\) For more on this, see the Adequate Legal Authority section of this fact sheet.

**Implementation of MCM 4 and 5:** The GP-0-15-003 and the draft GP-0-17-002 required that the MS4 Operator develop and implement a program that addressed stormwater runoff to the small MS4 from construction activities that require coverage under the SPDES General Permit for Stormwater from Construction Activities, GP-0-20-001 (CGP). The draft GP-0-22-002 now requires that the MS4 Operator develop and implement a program that addresses stormwater runoff within the regulated area from construction activities that require coverage under the CGP.

The GP-0-15-003 and the draft GP-0-17-002 required that the MS4 Operator maintain an inventory of post-construction SMPs discharging to the small MS4 that have been installed since March 10, 2003. The draft GP-0-22-002 now requires the MS4 Operator maintain an inventory of owned post-construction SMPs discharging within the regulated area. In accordance with the Department’s long-standing intent, the draft GP-0-22-002 clarifies the types of post-construction SMPs to include both privately owned and publicly owned post-construction SMPs in the inventory.

These changes were made based on feedback obtained by the Department during program audits and other outreach, which concluded that a majority of MS4 Operators currently implement MCM 4 and MCM 5 in a similar manner and do not distinguish those which discharge through the MS4 for implementation. Additionally, by requiring implementation for all construction activity and post-construction SMPs within the regulated area, the draft GP-0-22-002 can ensure more oversight is conducted, achieving better water quality protection, and reducing the discharge of pollutants to the MEP.

**SWPPP Review (Part VI.D.6. and Part VII.D.6. of the draft GP-0-22-002):** In accordance with 40 CFR 122.34(b)(4)(i)(D), GP-0-15-003 and draft GP-0-17-002 both required that, before coverage under the CGP, an MS4 Operator review and accept a stormwater pollution prevention plan (SWPPP). Both GP-0-15-003 and draft GP-0-17-002 also required that MS4 Operators must then inspect all construction sites and enforce compliance with that SWPPP. In accordance with 40

\(^{18}\) Part VII.D describes applicable construction activities for Non-Traditional and Traditional Non-Land Use MS4 Operators to be those permitted, approved, funded or owned/operated by the MS4 Operator. Where the MS4 Operator is listed as the owner/operator on the Notice of Intent for coverage under the CGP, the MS4 Operator must ensure compliance with the CGP. The additional requirements for oversight described in Part VII.D.6 through VII.D.9 are not needed.
CFR 122.34(b)(4)(i)(B), the SWPPP must be in conformance with the requirements of the CGP, the New York State Standards and Specifications for Erosion & Sediment Controls, November 2016 (NYS E&SC 2016), and the New York State Stormwater Management Design Manual, January 2015 (NYS SWMDM 2015) (or equivalent). MCM 5 of GP-0-15-003 and draft GP-0-17-002 required MS4 Operators to: 1) incorporate into the SWPPP review procedures, additional elements to ensure all post-construction SMPs meet the sizing criteria contained in the NYS SWMDM 2015; 2) ensure the SWPPP includes adequate provisions for long term maintenance as required by the CGP; and 3) have an operation and maintenance (O&M) plan that identifies the entity that will be responsible for the long term operation and maintenance of each practice.

The draft GP-0-22-002 continues to require that these items be included in the SWMP procedures; however, they are now located in the SWPPP review section of MCM 4. It was intended that both reviews occur simultaneously and prior to construction activity occurring. This new approach to the timing of the review was done to: 1) resolve some confusion about when to conduct the SWPPP review identified in the public comment period of draft GP-0-17-002, 2) be in conformance with the Phase II Remand Rule, and 3) allow MS4 Operators to reduce the discharge of pollutants to the MEP.

**MCM 4 – Construction Site Stormwater Runoff Control (Part VI.D. and Part VII.D. of the draft GP-0-22-002)**

GP-0-15-003 required the MS4 Operator to develop and maintain a construction site inventory of active sites and to perform regularly scheduled inspections. The draft GP-0-17-002 expanded upon this by specifying what must be included in the inventory, as well as criteria used to prioritize active construction sites. Positive feedback was received during the public comment period and from the MS4 Stakeholder Workgroup regarding the increased detail in the construction site inventory and the prioritization introduced in the draft GP-0-17-002. Because of this, many of the requirements in MCM 4 of the draft GP-0-17-002 remain the same in the draft GP-0-22-002.

**Construction Site Inventory (Part VI.D.4. and Part VII.D.4. of the draft GP-0-22-002):** GP-0-15-003 includes the requirement for the MS4 Operator to maintain an inventory of active construction sites to conduct inspections more effectively. The draft GP-0-17-002 built upon this by requiring more information to be collected about the construction site for the inventory, satisfying the Phase II Remand Rule. The draft GP-0-22-002 continues to require a construction site inventory with the level of detail presented in the draft GP-0-17-002. However, the inventory information included in the draft GP-0-17-002 has been refined in the draft GP-0-22-002, to meet the Phase II Remand Rule, and includes: the location of the project; owner/operator information; receiving waterbody name; the priority rating of the construction site; when the SWPPP was approved by the MS4 Operator; inspection history; and the status of the construction site/project. These inventory requirements allow MS4
Operators to oversee construction sites and reduce the discharge of pollutants to the MEP.

**Construction Site Prioritization (Part VI.D.5. and Part VII.D.5. of the draft GP-0-22-002):** GP-0-15-003 did not include a prioritization of construction sites. The draft GP-0-22-002 includes prioritization criteria for construction sites, similar to the Vermont Construction General Permit risk-based standard, which was included in the draft GP-0-17-002. High priority construction sites are identified based on the classification of the waterbody receiving any discharge, disturbed area, distance to any waterbody or flow channel, topography, and the characteristics of soils. Additionally, edits have been made to the prioritization criteria in the draft GP-0-22-002 to reflect the latest edition of the CGP, GP-0-20-001, including the addition of construction projects which disturb one or more acres of soils with a significant erosion risk associated and soil slope phases E and F identified on the current United States Department of Agriculture (USDA) Soil Slope Survey.

**Construction Site Inspections (Part VI.D.8. and Part VII.D.8. of the draft GP-0-22-002):** While GP-0-15-003 required that “all sites must be inspected where the disturbance is one acre or greater,” that permit did not specify the frequency of inspection. The draft GP-0-17-002 specified that high priority construction sites must be inspected every thirty (30) days based on their potential risk to water quality. An inspection frequency is necessary to comply with the Phase II Remand Rule, as well as to ensure that construction site discharges are addressed to reduce the discharge of pollutants to the MEP. In accordance with 40 CFR 122.34(b)(4)(i)(F), the draft GP-0-22-002 continues to require inspections of construction sites prioritized based on potential risks to water quality impacts. The frequency of the inspection required by the draft GP-0-22-002 varies between high and low priority construction sites. An inspection frequency is necessary to comply with the Phase II Remand Rule, as well as to ensure that construction site discharges are addressed to reduce the discharge of pollutants to the MEP.

Changes in the inspection procedures were made in response to feedback from the public comment period on the draft GP-0-17-002. To satisfy the inspection requirement for high priority construction sites, the draft GP-0-22-002 allows the MS4 Operator to utilize the Qualified Inspector’s weekly inspection reports, as required by the CGP. If the Qualified Inspector reports are utilized for this purpose, the MS4 Operator may inspect the sites at a lesser frequency (ninety (90) days). Different from the draft GP-0-17-002, the draft GP-0-22-002 includes provisions that allow MS4 Operators to reprioritize projects, thus reducing MS4 inspections as risk is diminished.

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In addition to the pre-construction inspections and inspection at project completion, low priority construction sites must be inspected at least once during active construction. If the project duration extends for more than one year, at least one active construction inspection must be conducted each Reporting Year. The permit requires that the inspection frequency is adjusted based on a decreased potential for water quality impacts as high priority construction projects are completed and final stabilization is achieved for those construction projects. The draft GP-0-22-002 ensures this by requiring updates to the construction site prioritization be made annually, based on information gathered as part of construction site inspections.

A new addition to the draft GP-0-22-002 is a specific list of individuals who need to be present during a pre-construction inspection/meeting. This was not included within GP-0-15-003 or the draft GP-0-17-002. These changes were made to draft GP-0-22-002 in response to comments submitted during the public notice period of draft GP-0-17-002, and from the MS4 Stakeholder Workgroup, to make the requirement satisfy the Phase II Remand Rule.

In accordance with 40 CFR 122.34(b)(4)(i)(E), the draft GP-0-17-002 included a requirement for MS4 Operators to have a way to receive public complaints. The draft GP-0-22-002 retained this requirement, as public feedback is a necessary component for MS4 Operators to ensure construction activities do not contribute pollutants to the MS4 and/or surface waters of the State within the regulated area. These construction requirements are similar to the IDDE requirements. Although it is not a requirement of the draft GP-0-22-002 and not necessary to reduce the discharge of pollutants to the MEP, MS4 Operators may find it helpful to create one email or phone number that can be used for any public complaints including IDDE reports and/or reports regarding construction activity.

MCM 5 – Post-Construction Stormwater Management (Part VI.E. and Part VII.E. of the draft GP-0-22-002)

In accordance with 40 CFR 122.34(b)(5)(i)(A), the draft GP-0-22-002 continues to include GP-0-17-002 elements, such as SWPPP Review, post-construction SMP inventory and inspection tracking, and post-construction SMP inspection and maintenance. In accordance with 40 CFR 122.34(b)(5)(i)(C), the MS4 Operator ensures the reduction of the discharges of pollutants to the MEP by developing and maintaining an inventory of post-construction SMPs located within the regulated area and inspecting the post-construction SMPs regularly to ensure long-term operation and maintenance. In conformance with the Phase II Remand Rule and to reduce the discharge of pollutants to the MEP, the draft GP-0-22-002 refines GP-0-15-003 MCM5 requirements. These refinements include: more detailed oversight inspection requirements; inventory and inspection information to be maintained for all public and private post construction practices that are designed and maintained in conformance with the applicable NYS SWMDM 2015 or equivalent; training requirements for individuals overseeing inspections; and inspection guidance to use.
**Post-Construction SMP Inventory & Inspection Tracking (Part VI.E.2. and Part VII.E.2. of the draft-GP-0-22-002):** To effectively conduct inspections and maintain both private and public post-construction SMPs, GP-0-15-003 required MS4 Operators to have an inventory of post-construction SMPs and track maintenance activities within the inventory. The draft GP-0-17-002 specified information to include in the inventory for each post-construction SMP. Comments received during the public comment period for the draft GP-0-17-002, and during the MS4 Stakeholder Workgroup, indicated that information regarding privately owned SMPs can be difficult to obtain in some cases and difficult to maintain regularly compared to publicly owned post-construction SMPs.

Similar to the draft GP-0-17-002, the draft GP-0-22-002 continues to require a single inventory with the same information for both publicly and privately owned/operated post-construction SMPs to ensure that all post-construction SMPs are being maintained to the level necessary to function properly and to the MEP. To satisfy the Phase II Remand Rule, and to ensure MS4 Operators can reduce the discharge of pollutants to the MEP, the inventory information can be collected by using either: 1) the MS4 Operator maintenance records, or 2) verification of maintenance records (by visual, written, or verbal confirmation) from the owner of the public or private post-construction SMP. The verification of inventory information addresses the comments received on the draft GP-0-17-002.

Although not required by the draft GP-0-22-002 and not necessary to reduce the discharge of pollutants to the MEP, MS4 Operators may find it helpful to include post-construction SMPs which were constructed prior to March 10, 2003 in the post-construction SMP inventory.

**Post-Construction SMP Inspection & Maintenance Program (Part VI.E.4. and Part VII.E.4. of the draft-GP-0-22-002):** GP-0-15-003 required inspections and maintenance of post-construction SMPs by trained staff. To satisfy the Phase II Remand Rule, and to ensure MS4 Operators can reduce the discharge of pollutants to the MEP, the draft GP-0-22-002 includes provisions for training individuals responsible for inspection and maintenance of post-construction SMPs. On March 31, 2017, the Department finalized the New York State Department of Environmental Conservation Maintenance Guidance: Stormwater Management Practices, March 31, 2017 (NYS DEC Maintenance Guidance 2017),\(^\text{20}\) developed with the Center for Watershed Protection. NYS DEC Maintenance Guidance 2017 is intended to be utilized by design professionals and staff of the MS4 Operator in the development and review of O&M plans for post-construction SMPs, as well as a reference for ongoing inspections and maintenance of existing practices. The draft GP-0-22-002 requires NYS DEC Maintenance Guidance 2017 to be used in specific instances but allows for an equivalent tool to be used for post-construction SMP inspections.

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\(^\text{20}\) The maintenance guidance is available on the Department website: https://www.dec.ny.gov/docs/water_pdf/smpmaintguidance.pdf.
The draft GP-0-17-002 specified that MS4 Operators must inspect post-construction SMPs at the frequency specified in the O&M plan of the approved SWPPP. The draft GP-0-22-002 expands upon this by specifying that, for practices where an associated SWPPP is not on file, MS4 Operators must follow the recommended frequencies outlined in the NYS DEC Maintenance Guidance 2017. This change was made in response to public feedback received during the draft GP-0-17-002 public comment period, and the MS4 Stakeholder Workgroup, which expressed the concern that older practices installed prior to the adoption of the local law for erosion and sediment control often contain limited information on file, including the original project SWPPP. Using the NYS DEC Maintenance Guidance 2017 to complete inspections reduces the discharge of pollutants to the MEP while satisfying the Phase II Remand Rule.

GP-0-15-003 and the draft GP-17-002 required documentation and timeframes for corrective actions. The draft GP-0-22-002 continues to require documentation of specific data elements and time frames for corrective actions (details can be found in the Enforcement Response Plan Section of the Fact Sheet).

**MCM 6 – Pollution Prevention & Good Housekeeping (Part VI.F. and Part VII.F. of the draft GP-0-22-002)**

As specified in 40 CFR 122.34(b)(6)(i), GP-0-15-003 established the basis for MS4 Operators to develop and implement a pollution prevention and good housekeeping program for municipal facilities and municipal operations. The pollution prevention and good housekeeping program ensures the MS4 Operator’s own activities, at municipal facilities or during municipal operations, do not contribute pollutants to surface waters of the State. GP-0-15-003 largely focused the program on assessments of municipal facilities and municipal operations and determining best management practice (BMPs) to reduce the discharge of pollutants to the MEP. In the draft GP-0-17-002, these requirements were expanded and presented as a comprehensive pollution prevention and good housekeeping program made up of: 1) facilities and operations assessment, 2) best management practices of all municipal operations and facilities, 3) municipal facilities,21 and 4) municipal infrastructure operations & maintenance. Comments received during the public comment period for the draft GP-0-17-002, and during the MS4 Stakeholder Workgroup, indicated the draft GP-0-17-002 requirements exceeded MEP.

The draft GP-0-22-002 continues to require the development and implementation of the pollution prevention and good housekeeping program. However, the draft GP-0-22-002 reorganized MCM6 into fewer, distinct sections: 1) best management

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21 Including the municipal facility inventory, prioritization, municipal facility specific SWPPPs, and assessments.
practices, 2) municipal facilities, and 3) municipal operations & maintenance. These changes were made in response to comments to reduce the discharge of pollutants to the MEP and to satisfy the Phase II Remand Rule. The following paragraphs provide additional detail about those succinct sections of MCM6 in the draft GP-0-22-002.

**NYS Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (MSGP, GP-0-17-004):** GP-0-15-003 and the draft GP-0-17-002 included conditions for MS4 Operators with MSGP municipal facilities to gain coverage under that MS4 permit. The approach in previous permits did not add any additional conditions providing environmental protection beyond those in the MSGP. Therefore, the Department changed course and MSGP municipal facilities are no longer eligible for coverage under the draft GP-0-22-002. If an MS4 Operator is operating an MSGP facility, the facility needs to gain coverage under the MSGP. This approach in the draft GP-0-22-002 streamlines both the permitting and compliance aspects of the MSGP.

1. **Best Management Practices (BMPs) (Part VI.F.1. and Part VII.F.1. of the draft GP-0-22-002):** GP-0-15-003 required the implementation of BMPs for all municipal facilities and operations but did not include a list of BMPs to use. A list of BMPs was added to the draft GP-0-17-002 and continues to be included in the draft GP-0-22-002, refined to satisfy the Phase II Remand Rule. The reduction of the discharge of pollutants to the MEP is achieved through the implementation of the BMPs, designed to minimize the discharge of pollutants associated with all municipal operations and facilities. A number of provisions in this section in the draft GP-0-17-002 were removed for the draft GP-0-22-002 because they were duplicative with other requirements of this section.

2. **Municipal Facilities (Part VI.F.2. and Part VII.F.2. of the draft GP-0-22-002):**

Municipal Facility Inventory (Part VI.F.2.b. and Part VII.F.2.b. of the draft GP-0-22-002): GP-0-15-003 did not include a requirement to inventory the municipal facilities, although, in assessing the municipal facilities, the MS4 Operators would have functionally inventoried the municipal facilities. The draft GP-0-17-002 built upon GP-0-15-003 by adding a specific requirement to inventory the municipal facilities. The municipal facility inventory requirement from draft GP-0-17-002 was retained but adjusted in the draft GP-0-22-002. Changes to the information included in the inventory were made in the draft GP-0-22-002 to reduce the discharge of pollutants to the MEP. For example, in the draft GP-0-22-002, the reduction of pollutants to the MEP is achieved through the identification of the department/personnel responsible who can effectively implement the SWMP.

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22 The best management practices (BMPs) have been moved to the beginning of MCM 6 in the draft GP-0-22-002, as they apply to both municipal facilities and municipal operations.

23 In the draft GP-0-22-002, as opposed to having a section of MCM 6 dedicated to assessments, both municipal facilities and municipal operations & maintenance include subsections for respective assessment requirements.
The municipal facility inventory serves as a tool for MS4 Operators to organize information about the municipal facilities. The inventory will help MS4 Operators better characterize the sites that are municipally operated and manage their potential to contribute stormwater pollutants to the MS4 or surface water of the State. As is the case with monitoring locations, creating an inventory is a simplified way to consolidate data in one location instead of it being dispersed across assessment forms.

Additionally, to satisfy the Phase II Remand Rule, the draft GP-0-22-002 requires MS4 Operators to collect particular information that more closely aligns with the Department's guidelines in grant funding (e.g., size of the facility in acres). MS4 Operators who implemented GP-0-15-003 to reduce the discharge of pollutants to the MEP, including municipal facility self-assessments, may already have some of the information required for the inventory.

Although not required by the draft GP-0-22-002 and not necessary to reduce the discharge of pollutants to the MEP, MS4 Operators may find it helpful to include municipal facilities located outside of the regulated area (i.e., not subject to these permit requirements) in the inventory in anticipation of the regulated area changing. The regulated area is subject to change, potentially adding more municipal facilities to the permit required inventory of municipal facilities when: 1) census information is updated, or 2) CSO communities undergo separation initiatives. Additionally, although also not required by draft GP-0-22-002 and not necessary to reduce the discharge of pollutants to the MEP, MS4 Operators may find it helpful to include in the inventory municipal facilities that are covered under a different permit, either an individual SPDES permit or the MSGP. The MS4 Operator will then have a comprehensive list of the municipal facilities and will more easily be able to determine which of those are subject to the draft GP-0-22-002 requirements.

Municipal Facility Prioritization (Part VI.F.2.c. and Part VII.F.2.c. of the draft GP-0-22-002): GP-0-15-003 did not include prioritization of municipal facilities. Criteria used to prioritize municipal facilities was introduced in the draft GP-0-17-002. The draft GP-0-17-002 required MS4 Operators to prioritize municipal facilities within three (3) years of the EDP and base the prioritization on the type of municipal facility (e.g., a DPW garage, park, town hall, etc.), with the type of municipal facility as an indicator of the pollutant generating potential. The USEPA commented on the draft GP-0-17-002 indicating that the three (3) years for the municipal facility prioritization was too long. Comments received during the public comment period for the draft GP-0-17-002, and during the MS4 Stakeholder Workgroup, indicated using the type of municipal facility to prioritize municipal facilities would not mitigate the potential impact to water quality because this method of prioritization assumed certain types municipal facilities inherently had a greater potential to generate pollution and/or impact water quality without considering other factors.
The draft GP-0-22-002 continues to use criteria to prioritize municipal facilities; however, the criteria have been revised from the draft GP-0-17-002 based on the comments received. Municipal facility prioritization is now based on the activities occurring at the municipal facility which are the indicator for pollutant generating potential. The updated prioritization criteria satisfy the Phase II Remand Rule, and allows the MS4 Operator to adjust the SWMP based on the prioritization to reduce the discharge of pollutants to the MEP. The draft GP-0-22-002 did not change the three (3) years to complete the municipal facility prioritization because in restructuring the draft GP-0-22-002, there are permit requirements that are required before (e.g., the mapping of municipal facilities) and after (e.g., development of the high priority municipal facility specific SWPPP) the prioritization.

The draft GP-0-22-002 continues to use the naming convention set forth in the draft GP-0-17-002 for the municipal facility prioritization as follows: 1) high priority municipal facilities, or 2) low priority municipal facilities. High priority municipal facilities have activities occurring on site with pollutant generating potential (e.g., fueling performed at the facility). Low priority municipal facilities do not have activities occurring on site with pollutant generating potential. The prioritization of a municipal facility determines the need to produce a municipal facility specific SWPPP and the frequency of assessments that occur on site. This approach allows MS4 Operators to reduce the discharge of pollutants to the MEP because MS4 Operators can focus their efforts on municipal facilities with the potential to discharge pollutants.

Assessments (Part VI.F.2.d.ii. and e.ii. and Part VII.F.2.d.ii. and e.ii. of the draft GP-0-22-002): GP-0-15-003 required the MS4 Operator to conduct a municipal facility self-assessment every three years but did not specify the contents of the assessment. The draft GP-0-17-002 addressed this by: 1) providing the Municipal Facility/Operation Assessment form to complete the municipal facility comprehensive site assessments, and 2) requiring wet weather visual monitoring, dry weather outfall inspections, and comprehensive site assessments at a frequency based on the municipal facility’s prioritization (i.e., high priority municipal facilities required quarterly wet weather visual monitoring and low priority municipal facilities did not require wet weather visual monitoring). Comments on the draft GP-0-17-002 indicated the frequency of assessments exceeded MEP.

In response to comments, and to satisfy the Phase II Remand Rule, several changes were made in the draft GP-0-22-002. The frequency of assessments for both high and low priority municipal facilities have been adjusted.

High priority municipal facilities will require: 1) wet weather visual monitoring twice a permit term, separated by one year, 2) monitoring location inspection and sampling twice a permit term, separated by one year, as required by MCM 3 of the draft GP-0-22-002, and 3) annual comprehensive site assessments. The “dry weather

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24 Required only for high priority municipal facilities.

25 The prioritization of municipal facilities was introduced in the draft GP-0-17-002.
monitoring” requirement in the draft GP-0-17-002 has not been removed. In the draft GP-0-17-002, “dry weather monitoring” was synonymous with the term “outfall inspections.” In the draft GP-0-22-002, the term “outfall inspections” have been replaced with “monitoring location inspection and sampling.” Consistent with the draft GP-0-17-002, the draft GP-0-22-002 does not require benchmark monitoring, which is a condition of the MSGP, at high priority facilities. This is appropriate because MSGP facilities are more likely to generate pollutants than high priority municipal facilities.

For low priority municipal facilities, draft GP-0-22-002 requires 1) monitoring location inspection and sampling, once a permit term, as required by MCM 3 of the draft GP-0-22-002 and 2) a comprehensive site assessment once a permit term. Consistent with the draft GP-0-17-002, for low priority municipal facilities the draft GP-0-22-002 does not require wet weather visual monitoring, a requirement for high priority municipal facilities, or benchmark monitoring, which is a condition of the MSGP.

The assessment frequency for municipal facilities in the draft GP-0-22-002 intentionally matches the inspection frequency of other permit components in the draft GP-0-22-002 (e.g., both low priority municipal facility comprehensive site assessments and low priority monitoring locations inspections must be conducted once a permit term). Although not required by the draft GP-0-22-002 and not necessary to reduce the discharge of pollutants to the MEP, simultaneous implementation of these permit requirements increases efficiency.

As a reference, Table 3 summarizes the municipal facility assessments and their frequencies based on the municipal facility prioritization. MS4 Operators should refer to the draft GP-0-22-002 for the complete permit requirements.

Table 3. Summary of assessment requirements for municipal facilities (Part VI.F.2. and Part VII.F.2. of the draft GP-0-22-002)

<table>
<thead>
<tr>
<th>Assessment</th>
<th>Frequency of Assessment</th>
<th>High Priority</th>
<th>Low Priority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Comprehensive Site Assessment</td>
<td></td>
<td>Annually</td>
<td>Once a permit term</td>
</tr>
<tr>
<td>Monitoring Locations Inspection and Sampling</td>
<td></td>
<td>Twice a permit term, separated by one year</td>
<td>Once a permit term</td>
</tr>
<tr>
<td>Wet Weather Visual Monitoring</td>
<td></td>
<td>Twice a permit term, separated by one year</td>
<td>N/A</td>
</tr>
<tr>
<td>Benchmark Monitoring</td>
<td></td>
<td>N/A</td>
<td>N/A</td>
</tr>
</tbody>
</table>

Municipal Facility Specific SWPPP (Part VI.F.2.d.i. and Part VII.F.2.d.i. of the draft GP-0-22-002): GP-0-15-003 did not require the development of municipal facility specific SWPPPs. The draft GP-0-17-002 required high priority municipal facilities to
develop and maintain a municipal facility specific SWPPP for the stormwater activities occurring at the site. Although the USEPA commented on the draft GP-0-17-002 stating that three (3) years to develop and implement a municipal facility specific SWPPP was too long, other comments from MS4 Operators during the draft GP-0-17-002 public comment period indicated that three (3) years to develop and implement a municipal facility specific SWPPP was too short and financially burdensome. The draft GP-0-22-002 extends the time allotted to complete this permit requirement to within five (5) years of the EDP. This change was made 1) in response to some of the comments on this new requirement, 2) there is insufficient information as to how many municipal facilities may meet the criteria for a high priority municipal facility, and 3) the municipal facility SWPPP is developed based on information collected earlier in the permit. The draft GP-0-22-002, similar to the draft GP-0-17-002, does not require the development of a municipal facility specific SWPPP for low priority municipal facilities.

The municipal facility specific SWPPP includes a site map made up of components which need to be mapped by the MS4 Operator. Under Part IV.D. of the draft GP-0-22-002, MS4 Operators will map some of these components before municipal facility specific SWPPPs are required to be developed. For example, monitoring locations must be included in the site map for a municipal facility specific SWPPP. MS4 Operators must map monitoring locations within three (3) years of EDP under Part IV.D. Municipal facility specific SWPPPs must be developed within five (5) years of the EDP. Therefore, MS4 Operators will have the monitoring locations mapped prior to the development of the municipal facility specific SWPPP. The permit requirements are intentionally sequential ensuring the reduction of the discharge of pollutants to the MEP.

3. **Municipal Operations & Maintenance (Part VI.F.3. and Part VII.F.3. of the draft GP-0-22-002):** Under GP-0-15-003, MS4 Operators were required to implement BMPs, as well as conduct annual assessments, for municipal operations because municipal operations that are not properly implemented can become sources of pollution. In the draft GP-0-17-002, these requirements were expanded and included specific permit requirements for catch basins, roads, bridges, and right of ways as these are also potential sources of pollution. The draft GP-0-22-002 further refined the permit requirements for those same pollutant sources to satisfy the Phase II Remand Rule and to allow the MS4 Operators to reduce the discharge of pollutants to the MEP.

Municipal Operations Assessments (Part VI.F.3.b. and Part VII.F.3.b. of the draft GP-0-22-002): Similar to the municipal facility assessments, GP-0-15-003 required the MS4 Operator to conduct municipal operations self-assessments every three years but did not specify the contents of the assessment. The draft GP-0-17-002 addressed this by providing the Municipal Facility/Operation Assessment form to be completed for municipal operations assessments. The draft GP-0-22-002 continues to require completion of this form for municipal operations assessments.
Catch Basin Inspection Program (Part VI.F.3.c.i. and Part VII.F.3.c.i. of the draft GP-0-22-002): GP-0-15-003 did not require the development and implementation of a catch basin inspection program, but it required the number of catch basins inspected and/or cleaned to be included in the annual reports. However, MS4 Operators need to perform maintenance to ensure storm sewer structures meant to reduce pollutants do not become sources of pollution themselves. Regularly maintaining catch basins prevents the accumulation of pollutants (e.g., sediment and trash) that are later released during rain events as well as blockages, backups, and flooding. To address these issues, the draft GP-0-17-002 proposed a catch basin inspection program and associated prioritization criteria: high priority catch basins had sumps >50% full of debris, moderate priority catch basins had sumps <50% full of debris, and low priority catch basins had no debris in the sump. Under the draft GP-0-17-002, MS4 Operators were required to inspect and/or clean out and prioritize catch basins within one permit term.

During the public comment period for the draft GP-0-17-002, the USEPA provided comments in support of the catch basin clean out program stating that it would “likely have significant [water quality] impacts.” Other comments received during the public comment period for the draft GP-0-17-002 from MS4 Operators, and during the MS4 Stakeholder Workgroup, indicated the draft GP-0-17-002 requirements exceeded MEP because, under previous MS4 General Permits, MS4 Operators were not required to: 1) have an inventory or map of catch basins, so neither the MS4 Operators nor the Department could estimate the number of catch basins that would need to be inspected and maintained, or 2) measure the amount of debris found in catch basin sumps during a cleaning, so MS4 Operators would not be able to accurately prioritize catch basins without historical information that would be used for prioritization.

The draft GP-0-22-002 continues to require routine maintenance of catch basins and specifies BMPs, but the catch basin inspection program has been adjusted. These changes were made in response to comments on the draft GP-0-17-002, to satisfy the Phase II Remand Rule, and to allow MS4 Operators to reduce the discharge of pollutants to the MEP. Under the draft GP-0-22-002, MS4 Operators are required to develop and implement a catch basin program which serves as an opportunity to gather more information about the MS4 by inspecting and inventorying the catch basins within five (5) years of EDP. The inspection and inventory timeframe intentionally matches the timeframe for mapping catch basins (Part IV.D. of the draft GP-0-22-002). Although not required by the draft GP-0-22-002 and not necessary to reduce the discharge of pollutants to the MEP, MS4 Operators may find it helpful to complete these permit requirements simultaneously.

The prioritization criteria for catch basins set forth in the draft GP-0-17-002 has been replaced with a corrective action process. For more on this, see the Corrective Actions section of this fact sheet.
Roads, Bridges, Parking Lots, & Right of Way Maintenance (Part VI.F.3.c.ii. and Part VII.F.3.c.ii. of the draft GP-0-22-002): Annual reports submitted under GP-0-15-003 asked MS4 Operators for details of the municipal operations BMPs (e.g., the miles of street swept), but GP-0-15-003 did not require the implementation of specific BMPs for the maintenance of roads, bridges, and right of ways. To address this, the draft GP-0-17-002 proposed BMPs to reduce the discharge of pollutants to the MEP for the maintenance of roads, bridges, and right of ways. While most of the BMPs proposed in the draft GP-0-17-002 were not commented on, the frequency of street sweeping in business districts and commercially zoned areas was heavily commented on. Comments received during the public comment period for the draft GP-0-17-002, and from the MS4 Stakeholder Workgroup, indicated the draft GP-0-17-002 requirements exceeded MEP because: 1) MS4 Operators are not able to street sweep during the winter months and 2) MS4 Operators do not necessarily own a street sweeper (i.e., street sweepers are rented or borrowed or street sweeping is contracted out). In response to the comments received, the draft GP-0-22-002 adjusted the street sweeping frequency to twice a year from April 1 through October 31. This allows MS4 Operators to reduce the discharge of pollutants to the MEP: 1) by ensuring the weather conditions are conducive to street sweeping and 2) because the proper equipment can be available to complete the street sweeping (e.g., shared services).

List of Impaired Waters 2018 NYS 303(d) list (Part VIII. Of the draft GP-0-22-002)

The 2018 NYS 303 (d) list was used to create the List of Impaired Waters (Appendix C) in the draft GP-0-22-002. The impaired waterbodies present in Appendix C: 1) have a pollutant source of “urban/stormwater runoff,” and 2) the pollutant impacting the waterbody is phosphorus, silt/sediment, pathogens, nitrogen, and/or floatables.

In accordance with 40 CFR 122.34(c)(1), for discharges to impaired waters, without a Total Maximum Daily Load (TMDL), GP-0-15-003 included enhanced BMPs in addition to the six MCMs, collectively referred to as “no-net increase.” The “no-net increase” requirement in GP-0-15-003 relied upon the MS4 Operators to ensure that new construction did not result in pollutant loads that would negate the progress made with the six MCMs. However, MS4 Operators did not fully understand how to comply, indicating that the “no-net increase” was overly complicated and recommending that it be replaced with specific requirements to achieve pollutant reductions. Environmental groups stated that this requirement does not actually reduce the amount of pollutants added to a waterbody. Pursuant to the Phase II Remand Rule, the general permit must establish all necessary permit terms and conditions to require the MS4 Operator to reduce the discharge of pollutants to the MEP, to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act. Therefore, the draft GP-0-17-002 proposed to redefine the “no-net increase” requirement by including clear, specific, and measurable BMPs targeted towards the pollutant of concern causing the impairment (i.e., enhanced BMPs). Similar to the draft GP-0-17-002, Part VIII of the
draft GP-0-22-002 continues to include those clear, specific, and measurable BMPs, but has removed the term “no-net increase.”

MS4 Operators commented that the draft GP-0-17-002 included frequency of required activities outlined in the SWMP and deliverables in the draft GP-0-17-002 which exceeded MEP. In updating the draft GP-0-17-002 with consideration for the comments, Part VIII of the draft GP-0-22-002 now includes less frequent implementation of some BMPs. The draft GP-0-22-002 also now includes targeted BMPs for silt/sediment and floatables in the reserved sections. This approach satisfies the Phase II Remand Rule and the reduces the discharge of pollutants to the MEP.

An example of a BMP meeting the Phase II Remand Rule in the draft GP-0-22-002 is that the MS4 Operator is responsible for delivering educational messages based on the pollutant of concern causing the impairment (see Part VIII.A.2, Part VIII.C.2, Part VIII.D.2, and Part VIII.E.2. of the draft GP-0-22-002). An MS4 Operator with a sewershed discharging to a waterbody impaired for phosphorus might choose to educate the residents on the use of mulching lawn mowers. Table 4 includes examples of possible educational topics that can be used based on the pollutant of concern.
Table 4. Examples of possible educational topics based on the pollutant of concern.

<table>
<thead>
<tr>
<th>Target Audience</th>
<th>Educational Topic</th>
<th>Pollutant of Concern</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Phosphorus</td>
</tr>
<tr>
<td>Any/ All</td>
<td>Waterbody impacted</td>
<td>X</td>
</tr>
<tr>
<td>Res</td>
<td>Lawn/Yard waste collection schedule</td>
<td>X</td>
</tr>
<tr>
<td></td>
<td>Proper disposal of grass clippings/leaf litter</td>
<td>X</td>
</tr>
<tr>
<td></td>
<td>Benefits of using mulching mowers</td>
<td>X</td>
</tr>
<tr>
<td></td>
<td>Reminders of the zero-fertilizer law</td>
<td>X</td>
</tr>
<tr>
<td></td>
<td>Proper management of pet waste</td>
<td>X</td>
</tr>
<tr>
<td></td>
<td>Proper disposal of car wash waters</td>
<td>X</td>
</tr>
<tr>
<td></td>
<td>Proper maintenance of septic systems/on-site wastewater systems</td>
<td>X</td>
</tr>
<tr>
<td></td>
<td>Proper waste collection and disposal</td>
<td>X</td>
</tr>
<tr>
<td>Com</td>
<td>Dumpster maintenance</td>
<td>X</td>
</tr>
<tr>
<td></td>
<td>Grease storage at food service establishments</td>
<td>X</td>
</tr>
<tr>
<td></td>
<td>Proper disposal practices for wash waters</td>
<td>X</td>
</tr>
<tr>
<td></td>
<td>Proper management practices for landscape irrigation water at retail or wholesale plant nurseries and golf courses</td>
<td>X</td>
</tr>
<tr>
<td></td>
<td>Reduce, Reuse, Recycle</td>
<td></td>
</tr>
</tbody>
</table>

Table 4 is not exhaustive but serves as additional explanation for the requirements of GP-0-22-002. Educational topics may vary between MS4 Operators based on: 1) the presence of an impaired waterbody, and/or 2) the pollutant of concern causing the impairment.

**Watershed Improvement Strategy Requirements for TMDL Implementation (Part IX. of the draft GP-0-22-002)**

In accordance with 40 CFR 122.34(c)(1) and 6 NYCRR 750-1.11, GP-0-15-003 and draft GP-0-17-002 required enhanced BMPs required beyond the six MCMs (i.e., Watershed Improvement Strategies) for discharges to impaired waters where the
USEPA has approved a TMDL requiring reductions in pollutant load from MS4s. Part IX. of the draft GP-0-22-002 continues to include enhanced BMPs required beyond the six MCMs for the watersheds which are prescribed in Table 3 of draft GP-0-22-002. In the draft GP-0-22-002, additional pollutant-specific enhanced BMPs have been added to Parts IX.A and IX.B for phosphorus and Part IX.D for nitrogen, to build upon the work that was completed during previous permit cycles. The additional applicable pollutant specific enhanced BMPs have been added to the relevant portions of Part VIII, which have been duplicated in Part IX.

For example, Part IX. now includes a permit requirement for public education based on the pollutant of concern, mirroring Part VIII. permit requirements. An MS4 Operator with a watershed discharging to a phosphorus TMDL watershed might choose to educate the residents on the use of mulching lawn mowers. Table 4 includes examples of possible educational topics that can be used based on the pollutant of concern.

For each of these watersheds, the corresponding implementation plans developed by the Department are incorporated by reference into Part IX.

In conformance with 6 NYCRR 750-1.14, a compliance schedule has been included for each of the Part IX sections. For more on this, see the Timeframes for Compliance section of this fact sheet. In the draft GP-0-22-002, MS4 Operators in this watershed must continue to report on progress with the retrofit program and source control programs by submission of progress reports as specified in Part V.B.3. of the draft GP-0-22-002. For more on this, see the Interim Progress Certifications section of this fact sheet.

New York City East of Hudson Watershed MS4s (Part IX.A. of the draft GP-0-22-002)

The Croton Watershed Phase II Implementation Plan for New York City East of Hudson Watershed identified pollutant load reductions for all East of Hudson MS4 Operators. Similar to GP-0-15-003 and draft GP-0-17-002, Part IX.A. of the draft GP-0-22-002 continues to require implementation of 1) pollutant specific enhanced BMPs and 2) retrofits. Both of these requirements are consistent with the Croton Watershed Phase II Implementation Plan for the New York City East of Hudson Watershed.

Other Phosphorus Watershed MS4s (Part IX.B. of the draft GP-0-22-002)

The following TMDLs and Implementation Plans identified pollutant load reductions for MS4 Operators in those phosphorus impaired watersheds: Greenwood Lake Watershed Phosphorus TMDL Implementation Plan, October 2019, Updated Phosphorus Total Maximum Daily Load for Onondaga Lake, June 2012, and Total Maximum Daily Load (TMDL) for Phosphorus in Lake Oscawana, September 2008.

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26 Although the USEPA approved TMDLs for Long Island Sound and Chesapeake Bay, the TMDL reduction required for New York’s MS4 contribution can be achieved through implementation of the 6 MCMs.
As included in GP-0-15-003 and in the draft GP-0-17-002, Part IX.B. of draft GP-0-22-002 continues to require implementation of pollutant specific enhanced BMPs for Onondaga Lake and Oscawana Lake. Part IX.B. of draft GP-0-22-002 has been expanded to include the Greenwood Lake watershed which requires 1) pollutant specific enhanced BMPs and 2) retrofits.

**Nutrient Runoff Law**

Stormwater phosphorus load reductions for all three lake watersheds are anticipated due to compliance with the enhanced BMPs of Part IX.B. and with the Nutrient Runoff Law, which was signed into law on July 15, 2010. The Nutrient Runoff Law, restricts the sale and application of fertilizers containing phosphorus for lawns and eliminated phosphorus in dishwashing detergents sold in New York State. The state of Minnesota\(^\text{27}\) studied the effects of this type of legislation on stormwater concentrations and reported a 15-30% reduction in phosphorus loading due to use of phosphorus-free fertilizer.

**Pathogen Impaired Watershed MS4s (Part IX.C. of the draft GP-0-22-002)**

Part IX.C. of GP-0-15-003 included watershed specific requirements to address pathogens as the pollutant of concern for MS4 discharges to impaired watersheds identified in the following the USEPA approved TMDLs:

- **Pathogen Total Maximum Daily Loads for Shellfish Waters in Oyster Bay Harbor and Mill Neck Creek, September 2003**
- **Peconic Bay Pathogens TMDL, September 2006**
- **Shellfish Pathogen TMDLs for 27 303(d) listed Waters, September 2007**

The approved TMDLs, that formed the basis of the GP-0-15-003 conditions, made certain assumptions as to the percentage of stormwater load attributable to MS4s. In advance of the deadlines specified in Table IX.C of GP-0-15-003, MS4 Operators expressed concerns that the TMDLs, and the GP-0-15-003 conditions developed from them, did not accurately represent the true contribution by MS4s, drastically overestimating it in some cases. This was confirmed with additional information submitted by MS4 Operators on the MS4 sewersheds and required revision of the TMDLs to provide a more realistic representation of the MS4s’ contribution of pathogen to the watersheds.

Given the inaccuracies identified, the Department withdrew these TMDLs on November 14, 2018. The support and process behind this action is further detailed in the Department Fact Sheet published in November 2018\(^\text{28}\) and entitled “Withdrawal of the Three Long Island Pathogen TMDLs.”

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\(^{27}\) Monitoring the Long-term Effectiveness of Metropolitan Cold Weather BMPs, Long-term Assessment of Phosphorus Free Fertilizers and Golf Course BMPs.” Minnesota Stormwater Research, Barten, J. et. al, 2006. [https://www.pca.state.mn.us/sites/default/files/stormwaterresearch-fertilizer.pdf](https://www.pca.state.mn.us/sites/default/files/stormwaterresearch-fertilizer.pdf)

\(^{28}\) The Pathogen TMDL Fact Sheet can be found here: [https://www.dec.ny.gov/docs/water_pdf/litmdlwithdrawal.pdf](https://www.dec.ny.gov/docs/water_pdf/litmdlwithdrawal.pdf)
The Department is currently in the process of revising the TMDLs to correct the inaccuracies. In the interim, the draft GP-0-22-002 does not include any requirements in Part IX.C, but rather requires implementation of enhanced BMPs specified in Part VIII.C. for the pathogen impaired waters found in Appendix C.

**Nitrogen Impaired Watershed MS4s (Part IX.D. of the draft GP-0-22-002)**

GP-0-15-003 required mapping of MS4s discharging to waters identified in the *TMDL for Nitrogen in the Peconic Estuary Program Study Area, Including Waterbodies Currently Impaired Due to Low Dissolved Oxygen: the Lower Peconic River and Tidal Tributaries; Western Flanders Bay and Lower Sawmill Creek; and Meetinghouse Creek, Terry Creek and Tributaries (September 2007)* (Table 6 of the draft GP-0-22-002). The submission of sewershed information by the MS4 Operators confirmed very limited sewersheds discharging to the waters subject to the Peconic Nitrogen TMDL due to the same development practices described in Part IX.C. for the Pathogen TMDLs. Thus, the draft GP-0-22-002 does not propose retrofits for these sewersheds but continues to require MS4 Operators to implement enhanced BMPs specified in Part IX.D.