



## **RESPONSIVENESS SUMMARY**

**For**

**Public Comments Received**

**On the**

**NEW YORK STATE**

**DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

**SPDES GENERAL PERMIT**

**FOR STORMWATER DISCHARGES**

**FROM**

**MUNICIPAL SEPARATE STORM SEWER SYSTEMS**

**(MS4s)**

Permit No. GP-0-15-003

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

April 15, 2015

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## **BACKGROUND**

Pursuant to Section 402 of the Clean Water Act (CWA), discharges 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) is a NPDES-approved program with permits issued in accordance with the Environmental Conservation Law (ECL).

The SPDES General Permit for Stormwater Discharges from Municipal Separate Storm Sewer Systems, GP-0-15-003, issued pursuant to Article 17, Titles 7, 8 and Article 70 of the ECL, will replace the current SPDES General Permit for Stormwater Discharges from Municipal Separate Storm Sewer Systems, GP-0-10-002. The new general permit is effective on May 1, 2015 and will expire April 30, 2017.

GP-0-15-003 will cover discharges of stormwater to surface waters of the State from small MS4s as defined in 40 CFR Part 122.26(a)(1)(v), 122.26(b)(8), and 122.26(b)(16)-(19). An owner or operator of a small MS4 with coverage under GP-0-10-002, as of the effective date of GP-0-15-003, shall be permitted to discharge in accordance with GP-0-15-003 on an interim basis for 180 days from the effective date of GP-0-15-003, and thereafter must gain coverage under GP-0-15-003 by submitting their 2014 Annual Report due June 1, 2015. An owner or operator of a small MS4 not authorized under GP-0-10-002 may obtain coverage under GP-0-15-003 by submitting a Notice of Intent (NOI) to the address provided on the NOI form. For newly regulated MS4s, authorization under GP-0-15-003 is effective upon written notification from the Department.

## **INTRODUCTION**

As issued, GP-0-15-003 contains only conforming changes, such as a new general permit identification number, a two (2) year term, and updated references to the SPDES General Permit for Stormwater Discharges from Construction Activity (GP-0-15-002) and Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (GP-0-12-001).

In 2010, Natural Resources Defense Council, Riverkeeper, Waterkeeper Alliance and other environmental organizations filed an Article 78 Petition challenging several provisions of GP-0-10-002. All commenters are referred to the briefs submitted in that matter, which are available upon request. That litigation is still pending. The Department is issuing GP-0-15-003 as an interim general permit to allow time for judicial resolution of the litigation. After conclusion of the litigation, the Department will review the content of the general permit holistically and propose any necessary and appropriate changes, considering the final judicial decision in its entirety.

A draft of GP-0-15-003 was published for public review and comment in the Environmental Notice Bulletin (ENB) on October 29, 2014, and in the New York Post, Newsday, Buffalo News, Syracuse Post-Standard, Binghamton Press, Glens Falls Post Star, and Rochester Democrat and Chronicle newspapers on October 30, 2014, as well as in the Albany Times Union on October 31, 2014. The comment period closed on December 1, 2014. No changes to the draft GP-0-15-003 have been made.

As required by 6 NYCRR 621.10(e), the Department prepared this responsiveness summary for the comments received on the draft GP-0-15-003.

## **SUMMARY OF COMMENTS**

The following comments have been received and organized into general categories that follow the format of GP-0-15-003 with general comments addressed at the end of the responsiveness summary.

### **PUBLIC PARTICIPATION AND INVOLVEMENT**

#### *Part IV. Stormwater Management Program (SWMP) Requirements*

**Comment 1:** Revise the permit to require that full SWMP Plans must be made available online at all times, with a permanent weblink both provided in the NOI and made easily locatable via a search of the MS4's website.

### **STORMWATER MANAGEMENT PROGRAM COMPONENTS**

#### *Part VII.A.4 and 5 & Part.VIII.A.4 and 5: Minimum Control Measures 4 and 5*

**Comment 2:** Revise the provisions concerning Minimum Control Measures 4 and 5, which relate to construction and post-construction runoff from new development and redevelopment sites, to incorporate effluent limitations that reduce pollution discharges to the maximum extent practicable. This includes:

- i. Directly insert or incorporate-by-reference the requirements contained within the Construction General Permit into the MS4 General Permit
- ii. Clearly state that the performance standards are required for all construction sites
- iii. Require reduced size threshold for constructions sites to implement post-construction within MS4 areas
- iv. Revise definition of imperviousness to include turf grass
- v. Require a 100 ft riparian buffer for all construction activities
- vi. Require limited use of dry wells to comply with the RRv criteria

**Comment 3 (Part VII.A.5.a.iii):** Revise the permit to require certification of adequacy of local law instead of allowing for adoption of sample local law.

**Comment 4 (Part VII.A.5.a.iv and Part VIII.A.5.a.iv):** Revise the permit to mandate, as oppose to encourage, the incorporation of Green Infrastructure principles into land use plans and local regulation. Additionally mandate the revision of local laws that prevent or preclude Green Infrastructure implementation with defined objectives, deliverables and a deadline for completion.

*Part VII.A.6 & Part VIII.A.6: Pollution Prevention/Good House Keeping for Municipal Operations- SWMP Development/Implementation*

**Comment 5 (Part VII.A.6.b and Part VIII.A.6.b):** Revise the permit to require, regardless of the size of disturbance, the incorporation of green infrastructure approaches into the design of all municipal construction projects, including both new construction and rehabilitation projects within the public right of way and on other municipal properties.

*WATER QUALITY STANDARDS AND CONDITIONS*

*Part III. Special Conditions*

**Comment 6 (Part III.B):** Revise the permit to replace all references to “Department-supported modeling,” or other similar references to requirements to use modeling to determine compliance with a permit provision, to refer expressly to particular modeling methodologies that must be used.

**Comment 7 (Part III.B.1):** Revise the permit to update the list, in Appendix 2, of waters that are impaired by pollutants of concern associated with MS4 discharges but for which there is no applicable Total Maximum Daily Load (TMDL) wasteload allocation (WLA). The Department should also include in Appendix 2: (i) any other waterbody-pollutant pairing for which urban runoff (or an equivalent term) is identified on the Department’s most current listing of impaired waters as a source of impairment; (ii) any other waterbody-pollutant pairing that the Department’s 2011 methodology excludes because the pollutant is listed as a non-“primary” cause of impairment; and (iii) any waterbody listed as impaired for floatables that is within a watershed that receives discharges from an MS4.

**Comment 8 (Part III.B.2 and Part IX):** Revise the permit to establish Watershed Improvement Strategy requirements (and associated schedules of compliance, pursuant to applicable requirements of federal and state law) for discharges of

nitrogen to Long Island Sound (LIS).

**Comment 9 (Part III.B.2 and Part IX):** Revise the permit to include requirements to implement any MS4 WLAs from TMDLs that have been promulgated since the issuance of the current GP-0-10-002.

#### *Part IX. Watershed Improvement Strategy Requirements*

**Comment 10 (Part IX):** Revise the “retrofit plan” provisions of Part IX to clearly define, for all of the Part IX watersheds, the required elements of a retrofit plan and the criteria by which such plans’ adequacy will be judged, including specific deadlines for deliverables.

**Comment 11 (Part IX):** Revise all appendices in Part IX to ensure that they clearly and accurately identify all covered MS4s, watersheds, sewersheds, and waterbodies.

**Comment 12 (Part IX.C):** Disaggregate the pathogen load to each waterbody listed in Table IX.

**Comment 13 (Part IX.C and Part IX.D):** Revise Tables IX.C and IX.D to clearly and accurately identify all covered waterbodies for which reductions are required.

#### *NOTICE OF INTENT (NOI) AND ANNUAL REPORTING REQUIREMENTS*

**Comment 14:** Revise the permit to state expressly and to emphasize clearly that a NOI must include information demonstrating compliance with each of the permit’s specific requirements. Concurrent with renewal of the permit, the Department should update the NOI form and Annual Report form to ensure that MS4s can rely on those forms to submit all of the information necessary to obtain permit coverage.

**Comment 15:** Revise the permit to state expressly and to emphasize clearly that annual reporting requirements stated in the permit are controlling in the event of any conflict between the permit language and the Department’s Annual Report form.

#### *GENERAL COMMENTS*

**Comment 16:** Revisit whether Regional Stormwater Entities are effective and modify as necessary.

**Comment 17:** Revisit the effectiveness of the septic programs required in Parts IX. A.3.b, B.3.a and C.3 and modify as necessary.

**Comment 18:** Revise the permit to address all contentions in the pending litigation to redress the legal defects alleged in that litigation.

## **RESPONSE TO ALL COMMENTS**

*The comments are related to a matter that is currently in litigation. The Department will review the content of the general permit holistically, with consideration of the final judicial determination in its entirety in that litigation, and propose any necessary and appropriate changes. Additionally, the Department will benefit from input from stakeholders, including the regulated community, where appropriate, in determining how best to address the issues or concerns raised by the comments.*