



# **Responsiveness Summary**

**For**

**Public Comments Received**

**on**

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

Proposed Modification

January 2016

Responsiveness Summary  
MS4 General Permit Modification  
GP-0-15-003

## BACKGROUND

Pursuant to Section 402 of the Clean Water Act (“CWA”), operators of small municipal separate storm sewer systems (“small MS4s”), located in urbanized areas and those additionally designated by New York State are unlawful unless they are 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 New York State Environmental Conservation Law (ECL). Small MS4 operators who develop and implement a stormwater management program (SWMP) and obtain coverage under SPDES General Permit for Stormwater Discharges from MS4s, GP-0-15-003, are authorized to discharge stormwater from their small MS4.

The New York State Department of Environmental Conservation (NYSDEC) has prepared this responsiveness summary to address the comments that were received on the proposed modifications to GP-0-15-003 to address compliance schedules for MS4 discharges to waterbodies with an approved Total Maximum Daily Load (TMDL). Part IX of GP-0-15-003 contains requirements applicable to MS4s discharging to waterbodies with approved TMDLs. In 2010, a challenge to GP-0-10-002, predecessor to GP-0-15-003, was filed. In a January 2012 decision, Natural Resources Defense Council, et al., v. New York State Department of Environmental Conservation, the Westchester County Supreme Court (Supreme Court) held, in relevant part, that “all of the dates for compliance provided in the [Watershed Improvement Strategy] and [Pollutant Load Reduction] timetables are more than nine months from the effective date of the permit. Consequently, the specification in the permit of compliance schedules was mandatory and the failure to do so was unlawful.” NYSDEC did not appeal the Supreme Court’s decision with regard to compliance schedules. Therefore, the January 2012 decision of the Supreme Court is controlling solely on the issue of compliance schedules. NYSDEC and Petitioners entered into a Consent Order and Judgment that allowed GP-0-10-002 to remain in effect through appeals. As part of this agreement, NYSDEC agreed to issue a final modified general permit within 4 months of public notice of the draft modified general permit. An advanced notice of proposed permit was published for public review and comment in the Environmental Notice Bulletin (ENB) on July 8, 2015, and the draft modified general permit was published for public review and comment in the ENB on September 16, 2015 with comments being due by October 16, 2015.

This responsiveness summary addresses all relevant comments received on the proposed modifications. The comments have been grouped by general category with

frequently raised issues summarized and presented as one set of comments. Pursuant to 6 NYCRR 750-1.18(d), only the aspects of the general permit proposed to be modified are subject to public review. Comments received on areas of the general permit that were not part of the proposed modification will be considered in the drafting of the general permit renewal expected to be released for public review and comment on or before November 1, 2016.

**Commenters on Draft Permit  
Public Noticed on September 16, 2015**

Organization		Name	Date
1	Hempstead Harbor Protection Committee	Eric Swenson Executive Director	10/20/15
	Manhasset Bay Protection Committee	Sarah Deonarine Executive Director	
	Oyster Bay/Cold Spring Harbor Protection Committee	Jaime Van Dyke Chair	
	Friends of the Bay	Paul DeOrsay Executive Director	
2	Town of Riverhead	Drew Dillingham Assistant Town Engineer	10/15/15
		Daniel P. McCormack Deputy Town Attorney	
3	Citizens Campaign for the Environment	Sarah Eckel	10/14/15
	Hackensack Riverkeeper	Bill Sheehan	
	Natural Resources Defense Council	Rebecca Hammer & Lawrence Levine	
	Peconic Baykeeper	Dan Dulizio	
	Riverkeeper, Inc.	Christopher Len	
	Save the Sound	Roger Reynolds	
	Waterkeeper Alliance	Marc Yaggi	
4	New York State Department of Transportation [NYSDOT]	Daniel P. Hitt Director, Office of Environment	10/16/15
5	Town of Shelter Island	Laury Dowd Town Attorney	09/29/15
6	Town of Southold	Michael M. Collins, P.E.	10/07/15
7	Nelson, Pope & Voorhis, LLC	Eileen Keenan Senior Environmental Planner	10/02/15
8	Village of Brookville	John Waltz	09/17/15
	Village of Old Westbury	Bowne Group	

## Legal Standard for Compliance Schedules

Comment 1: Comments were submitted indicating that the changes proposed by NYSDEC do not meet the legal standard for compliance schedules and that sufficient information is currently available to allow NYSDEC to establish interim remedial measures beyond the semi-annual reports noting that the actions or operations that make up compliance schedules must be remedial measures or acts that, by definition, are done to correct or improve something and that interim requirements must be mandatory actions that achieve progress toward the ultimate compliance obligation. These commenters assert that a reporting requirement does not meet this definition as submitting a report does not move an MS4 any closer to achieving the pollutant reductions that are required by law. These commenters also suggest that under NYSDEC's proposal, an MS4 could comply with the general permit by submitting a report indicating that it had done nothing at all during the reporting period to make progress towards achieving its Pollutant Load Reductions under Part IX of the general permit and argue that this does not satisfy state or federal law, which require that compliance schedules must hold MS4s accountable for implementing interim remedial measures. On the other hand, comments provided by some MS4 operators on Long Island question the pollutant load reductions and timetables in Part IX of the general permit and assert that additional information is needed for sewershed areas to waterbodies listed in Parts IX.C and IX.D of the general permit before attempting to achieve pollutant reductions, or to report semi-annually on efforts to do so. Comments received from those MS4 operators state they cannot calculate what, if any, portion of its stormwater runoff must be addressed by retrofit projects because NYSDEC has not informed them of their disaggregated load reduction requirement nor has NYSDEC specified criteria or provided training as to how the load reduction can be achieved. MS4 operators also commented that funding is necessary for compliance with Part IX of the general permit. [1][2][3][6][7]

***Response 1: Part IX of the general permit contains interim requirements for the development of Watershed Improvement Strategies (WIS) and retrofit plans, ultimately achieving a pollutant load reduction for a Pollutant of Concern (POC) by a specified deadline in the general permit. Additionally, Part IX of the general permit already requires specific actions (i.e. pollutant specific Best management Practices (BMPs)), which are part of the WIS, to reduce specific POCs. Examples include:***

- **An on-going public education and outreach program that identifies the potential sources of the specified pollutant of concern (POC) in stormwater runoff and describes steps that contributors can take to reduce the discharge of the POC;**
- **Mapping of the entire MS4 conveyance system discharging to the waterbody with an approved TMDL to assist in identification of potential sources of the POC;**
- **Inspection program for on-site wastewater systems to reduce the contribution of nutrients and pathogens from failed septic systems;**
- **Construction oversight program to reduce the contribution of phosphorus from eroded soils associated with construction activity on sites greater than or equal to 5,000 square feet in the East of Hudson (EOH) New York City watershed;**
- **Post-construction stormwater management program to reduce the phosphorus load from new development and redevelopment projects by inclusion of stormwater treatment practices designed to meet the Enhanced Phosphorus Removal Design Standards into proposed development plans in the EOH, Onondaga Lake, Greenwood Lake & Oscawana Lake watersheds;**
- **Inspection and maintenance programs for catch basins and manhole sumps to remove sediment and debris so that it does not become a source of phosphorus in the EOH watershed;**
- **Outfall inspection programs to identify illicit discharges or erosion problems and correct them; and**
- **Turf management programs to address fertilizer application on municipal property and ensure that grass clippings and leaves are managed so they are not a source of nutrients in stormwater runoff.**

**Development of these pollutant source control programs was to be completed by the dates contained within Part IX of the general permit; the WIS deadline. The WIS deadlines have since passed and MS4 operators are now required under the general permit to be implementing these pollutant source control programs. The general permit prescribes an adaptive management approach for these programs that involves on-going evaluation and adjustment of practices that address the most easily identifiable and controllable sources so that on-going reductions in pollutant load are maximized. The source control programs do not conclude on a date certain, but rather are continuous efforts on the part of the MS4. The implementation of the pollutant source control programs are actions that will achieve progress toward the ultimate compliance obligation, which is the pollutant load reduction deadline. As the pollutant source programs are on-going programs, they are not readily divisible into stages for completion. Therefore, semi-annual progress reports are the appropriate mechanism for compliance with, and specifically allowed**

***under, 6 NYCRR 750-1.14(b). The semi-annual progress report allows NYSDEC to more closely track the progress of the MS4 operators in implementation of the source control programs, as well as increase NYSDEC's understanding of the reductions achieved from source control programs so that improvements can be made in future permit renewals, if needed (e.g. addition of new requirements if new sources are identified or if adequate progress is not made). If an MS4 operator were to submit a progress report indicating that it had done nothing during the reporting period, as suggested by some commenters, the MS4 operator would be in violation of the general permit for failure to implement the requirements of Part IX.***

***-As part of the WIS, some MS4 operators are required to develop retrofit plans, where appropriate, to further reduce the POC load from MS4s, beyond that which is achieved through the source control programs. In December 2013, NYSDEC issued the Retrofit Program Plan Guidance Document for Pathogen Impaired Watershed MS4s on Long Island, which described the information that must be submitted to NYSDEC to be considered an approvable retrofit program plan. During that time, NYSDEC has also been gathering sewer shed specific information from Long Island MS4 operators. While litigation on GP-0-10-002 continued, NYSDEC made progress towards development of additional retrofit implementation guidance and expects to release that information in draft format early in 2016. Based on information from the MS4 operators and gathered by NYSDEC, the retrofit implementation guidance will identify, the appropriate pollutant load reduction required of specific MS4s. The retrofit implementation guidance will also provide additional stages for completion by identifying interim requirements to achieve specified pollutant load reductions ultimately achieving the compliance with the TMDL. Until such time that this work can be completed and fully vetted through a public process (expected to be complete before public notice of the general permit renewal on or before November 1, 2016), progress reports are the appropriate mechanism for compliance with, and specifically allowed under, 6 NYCRR 750-1.14(b)***

### **Additional Reporting Unnecessary**

Comment 2: Several commenters expressed concerns that the additional reporting would create unnecessary confusion, require duplicative reporting and strain already limited resources with little to no benefit. Commenters note that MS4 operators are already required to provide information in their annual reports in June of each calendar year and suggest that the additional reporting be combined with the existing annual report. [1][2][3][6][7]

***Response 2: In addition to the reasons described in response 1, the semi-annual reporting is required to meet 6 NCYRR 750-1.14 and address the Supreme Court decision on the issue of compliance schedules. In response to comments relating to duplication of reporting, the final general permit modification clarifies that the information will be reported in 6 month intervals demonstrating progress made during each 6 month period. Progress made for the period of March 9 through September 9 will be reported in December while progress made for the period of September 10 through March 8 will be reported with the annual report due in June. In addition, the annual report form due on June 1, 2017 has been modified to remove reporting requirements for Part IX. Beginning with the September 2016 to March 2017 reporting period, covered entities will attach the reporting forms for activities conducted from September to March so that duplicative information is not reported.***

### **Monitoring**

Comment 3: Several commenters noted that additional monitoring is needed to measure progress noting watershed implementation plans and compliance schedules are only useful if the reported results and pollutant reduction milestones can be verified, something that cannot be achieved without more robust ambient water quality monitoring. Some commenters noted that guidance for an appropriate monitoring program must be provided by NYSDEC that specifies the frequency, locations, methodology and contingencies along with appropriate education and outreach to effectively implement these general permit requirements. [2][6]

***Response 3: The draft modified general permit did not propose modifications to the monitoring requirements. NYSDEC will consider the comments regarding the need for additional guidance to measure progress in the drafting of the general permit renewal expected to be released for public review and comment on or before November 1, 2016.***

### **Errors must be corrected to correctly identify MS4s subject to the interim reporting requirements**

Comment 4: Several commenters suggest that the list of the municipal entities that are subject to Part IX.C and IX.D requirements needs to be verified noting that the watershed illustrations provided in the Appendices do not accurately reflect which municipal storm sewer systems discharge to TMDL waterbodies. [1][6][7][8]

**Response 4: Part V.D has been clarified to state that the semi-annual reporting requirements apply to covered entities who own or operate MS4s within the specified watersheds listed in Part IX. By definition, MS4 refers to separate stormwater conveyance systems that discharge to surface waters of the State. Reference in Part V.D. to the Appendices has been removed. The watershed illustrations provided in the Appendices are intended to provide guidance on the general location of the watersheds and are not intended to reflect MS4s discharging to the TMDL waters. MS4 operators are required to evaluate their system and determine if they have outfalls that discharge directly or indirectly to surface waters within the watersheds listed in Part IX. NYSDEC has completed an evaluation of information submitted by MS4 operators in response to the Retrofit Program Plan Guidance Document for Pathogen Impaired Watershed MS4s on Long Island (December 2013) and will be releasing guidance on implementation of retrofits in draft format in early 2016 for public comment. The list of covered entities subject to the semi-annual reporting requirements will be further refined with these documents. Until the retrofit implementation guidance is fully vetted through the public process and incorporated into the general permit, operators of MS4s within the watersheds listed in Part IX are required to submit the semi-annual report but may reference the information submitted to NYSDEC through the implementation guidance when describing their WIS.**

Comment 5: Several commenters note that MS4 operators have submitted information in response to the Retrofit Program Plan Guidance Document for Pathogen Impaired Watershed MS4s on Long Island (December 2013) to better identify the extent of their storm sewersheds and outfalls, and that such studies have confirmed that their systems do not discharge to TMDL waterbodies. These commenters suggest that the additional reporting requirement should not apply to these MS4s. [1][7][8]

**Response 5: The semi-annual reporting requirements apply only to covered entities who own or operate MS4s within the watersheds listed in the Part IX tables. By definition, MS4 refers to separate stormwater conveyance systems that discharge to surface waters of the State. Covered entities that they do not own or operate a separate storm sewer system that directly or indirectly discharges to a listed waterbody are not subject to the requirements and associated reporting of Part IX for that waterbody. NYSDEC has completed an evaluation of information submitted by MS4 operators in response to the Retrofit Program Plan Guidance Document for Pathogen Impaired Watershed MS4s on Long Island (December 2013) and will be releasing guidance on implementation of retrofits in draft format in early 2016 for public comment. The retrofit implementation guidance for Pathogen Impaired Watershed MS4s on Long Island will identify the covered entities who have certified that they do not**



***own or operate MS4s that directly or indirectly discharge to the listed waterbodies. Until the retrofit implementation guidance is fully vetted through the public process and incorporated into the general permit, these MS4 operators are required to submit the semi-annual report but may reaffirm that there are no MS4 outfalls that discharge directly or indirectly to the listed waterbody when describing the WIS for that waterbody.***

Comment 6: Budds Pond and West Harbor/Darby Cove should be removed from the general permit because these waterbodies are not currently impaired by pathogens nor were they impaired by pathogens at the time the TMDLs were completed. These waterbodies are closed due administrative reasons and additional reporting should not be required. [6]

***Response 6: NYSDEC has completed an evaluation of the information submitted by MS4 operators in response to the Retrofit Program Plan Guidance Document for Pathogen Impaired Watershed MS4s on Long Island (December 2013) and expects to release the results in draft format in early 2016 for public comment. The list of covered entities subject to the reporting requirements and watershed illustrations will be further refined pending finalization of that information. Until the retrofit implementation guidance is fully vetted through the public process and incorporated into the general permit, covered entities with MS4s discharging to these waters are required to submit the semi-annual report but may reference the information submitted to NYSDEC through the implementation guidance when describing the WIS.***

### **Reporting Forms need modification**

Comment 7: Part IX.C (and Part IX.D) Question #6 should be revised to state, "Number of On-Site Wastewater Treatment Systems (OWTS) with 1000 gpd capacity **with actual, or potential, to discharge to an MS4** within a waterbody listed in Table IX.C (or Table IX. D). [1][7]

***Response 7: The pollutant specific BMPs contained in Part IX apply to MS4 sewersheds to the listed waters. OWTS within the MS4 sewershed discharging to the applicable water bodies listed in Parts IX.A, B and C have been determined to have a potential to discharge and should be included in the inspection program. Questions related to on-site sanitary system inspection programs have been removed from the Progress Report for Part IX.D to accurately reflect the permit requirements.***

Comment 8: Regarding Part IX.C (and Part IX.D) Question #11, it is necessary to clarify that the reporting pertaining to stormwater management practice (SMP)

inspections and maintenance is limited to those practices (as specified in Part VII.A.5.a.iv.) “discharging to the small MS4 that have been installed since March 10, 2003, all practices owned by the small MS4, and those practices found to cause or contribute to water quality standard violations.” [1][7]

***Response 8: Any known SMPs within the sewershed of the impaired waters should be included in the inspection and maintenance program to ensure that they are not contributing the POC to the impaired waters. Covered entities must report on all SMP inspection and maintenance activities performed within the sewershed of the listed waterbody for the reporting period.***

Comment 9: The retrofit program reporting required by Part IX.C (and Part IX.D) Question 12 is inconsistent with the NYSDEC’s Retrofit Program Plan Guidance Document for pathogen Impaired Watershed MS4s on Long Island (December 2013) and it is inconsistent with the documentation NYSDEC has thereby since required/requested and accepted. [1][7]

***Response 9: See response to comment 1. The reporting requirements found in Question 12 of the Progress Report Form for Part IX.C are consistent with the Retrofit Program Plan Guidance Document for Pathogen Impaired Watershed MS4s on Long Island (December 2013) for MS4 operators where retrofits are needed to meet the pollutant load reduction. MS4 operators who do not have retrofitting requirements may reference the information submitted to NYSDEC through the finalized retrofit implementation guidance when completing Question 12 of the Progress Report Form. .***

Comment 10: As the ultimate goal of each WIS is reduction of the POC, the proposed semi-annual reporting by MS4s should only identify the activities that have been performed that can measure progress toward achieving the actual pollutant discharge reduction requirements of the TMDL. Requiring only the relevant reporting information will avoid unnecessary commitment of limited resources on the part of all affected MS4s. The focus of the Progress Reports should be limited to information directly related to reducing the POC. For Non-Traditional MS4s this should only include:

- The number and type of SMPs constructed during the reporting period with enhanced phosphorus removal;
- Identification of the SMPs where phosphorus pollutant problems have been identified and addressed;
- The amount of fertilizer applied that contains phosphorus;
- Identification and description of the stormwater retrofit projects constructed (for both phosphorus and pathogens); and
- The number of illicit discharges discovered, eliminated and targeted for elimination during the reporting period. [4]

***Response 10: The reporting forms require reporting on activities as required by Part IX. MS4 operators subject to Part IX should be keeping records demonstrating compliance with the general permit requirements applicable to the type of MS4 (e.g. traditional land use control, traditional non-land use control or non-traditional).***

Comment 11: Several items on the proposed Progress Reports ask for numerical data that are not essentially useful in determining the pollutant reduction effectiveness of the program. The number of SMPs in sewersheds draining to the listed waterbody, and the number inspected and/or maintained do not measure any reduction in the POC. The Public Education and Outreach section, including the number of educational materials that have been delivered is not a valid indicator of program effectiveness. If 1000 brochures were handed out at the County fair, then immediately thrown away, they are not effective. Similarly, the number of pet waste bag stations in the sewershed is not necessarily indicative of the effectiveness of the program. [4]

***Response 11: Maintenance of existing SMPs is critical to their ongoing performance. Lack of maintenance can reduce or eliminate any reduction in POCs and in some cases may cause the practices to become a source of pollutants. While public education and outreach can be difficult to measure, it can be an effective means in prevention of pollutants at their source. The MS4 operator should be evaluating the effectiveness of their programs and making adjustments where they are shown to be ineffective. The reporting forms inform NYSDEC as to the effectiveness of the WIS and changes made through implementation. See response to comment 1.***

Comment 12: The general permit does not require Non-Traditional MS4s to perform inspections of OWTS and therefore reporting on these activities should not be required of Non-Traditional MS4s in the Progress Reports. [4]

***Response 12: The Progress Report Forms have been corrected such that non-traditional MS4s do not need to report information related to inspection of on-site disposal systems. See response to comment 10.***

Comment 13: Item 9 of Progress Report for Part IX.A should refer to SPDES-permitted construction sites of 5000 square feet or greater, and no reporting of projects less than 5000 square feet. [4]

***Response 13: The Progress Report Form for Part IX.A has been revised as suggested.***

Comment 14: Item 11.f (the second occurrence of 11 .f) in the Progress Report Forms for Part IX.A and Part IX.B should be broken into two questions: the first ("11 .g") relates to, and should refer to, the New York State Standards and Specifications for Erosion and Sediment Control. The second ("11.h ") relates to stormwater management practice design with enhanced phosphorus removal. [4]

***Response 14: The Progress Report Forms for Part IX.A and IX.B have been revised as suggested.***

Comment 15: Part IX.B.3 of the general permit does not require MS4s in the Onondaga Lake Watershed to perform inspections of OWTS and therefore this item should not be required of these MS4s in the Progress Report. [4]

***Response 15: The Progress Report Form for Part IX.B has been revised as suggested.***

Comment 16: Item 9 of Progress Report for Part IX.B should refer to SPDES-permitted construction sites of one acre or more. The Permit does not require item 9.a and therefore this item should not be required in the Progress Report. [4]

***Response 16: The Progress Report form for Part IX.B has been revised to remove reporting on construction sites as there are no additional requirements specified for construction site stormwater runoff control in Part IX.B.4 of the general permit. Covered entities shall continue to report on their construction site inspections in the annual report.***

Comment 17: Part IX.B.6 of the general permit does not require Non-Traditional MS4s to [develop a Stormwater Conveyance System inspection and maintenance program] and therefore reporting on these activities should not be required of Non-Traditional MS4s in the Progress Report. [4]

***Response 17: The Progress Report Form for Part IX.B has been corrected to remove reporting of activities related to implementation of a stormwater conveyance system inspection and maintenance program for Part IX.B waters as these activities are not listed as enhanced BMPs within Part IX.B. See response to comment 10.***

Comment: 18 Part IX.C.6 of the general permit is not applicable to Non-Traditional MS4s and therefore reporting on enhanced BMPs for Municipal Operations pollution prevention/good housekeeping should not be required of Non-Traditional MS4s in the Progress Report. [4]

***Response 18: The Progress Report Form for Part IX.C has been corrected such that non-traditional MS4s do not need to report on the listed activities in item 14. See response to comment 10.***

### **Miscellaneous Comments not related to the general permit modification**

Comment 19: Various provisions of the proposed 2015 general permit challenges the goals hoped to be achieved regarding water quality concerns by burdening [MS4 operators] with unrealistic expectations in general permit language that is ambiguous, confusing, contradictory, impractical, cost-prohibitive and beyond the [MS4 operator's] resource capability. It is recommended that the present [general] permit be extended indefinitely until such time that the [NYSDEC] addresses the concerns and suggestions raised herein and thereafter proffers a proposed [general] permit that is realistic in its expectations, soundly supported by objective technical and scientific data and reasonably achievable in the present economic climate.[2]

***Response 19: Pursuant to ECL § 17-0817 and 6 NYCRR 750-1.15, SPDES permits for discharges to surface waters have a maximum term of 5 years. To allow time for judicial resolution of the litigation, NYSDEC issued GP-0-15-003 as an interim general permit with minor changes and a two (2) year term. The interim general permit will expire on April 30, 2017. Additionally, as discussed in more detail in the introduction to this Responsiveness Summary, NYSDEC is under a court-ordered deadline to finalize modifications of GP-0-15-003 by January 16, 2016. NYSDEC will address concerns related to general permit language identified to be ambiguous, confusing or impractical through the work related to the development of the general permit renewal, which must be publicly noticed on or before November 1, 2016.***

Comment 20: Appendix 2 continues to list "Tidal Tribs to Gr Peconic Bay, Northshr" as an impaired segment despite the fact that pathogen TMDLs were established for this cluster of embayments as part of the Peconic Pathogen TMDL. It is the only TMDL waterbody located within Southold that is listed in Appendix 2, all of the others are listed solely in Part IX of the general permit. Please correct Appendix 2 as necessary and/or add language to the general permit that gives clear direction as to how municipalities should interpret these double-listing and incorporate them into their stormwater programs. [6]

***Response 20: This comment is outside the scope of the draft modified general permit, which only proposed changes related to compliance schedules in Part IX. This comment will be considered in the drafting of the general permit renewal expected to be released for public review and comment on or before November 1, 2016.***

Comment 21: The Town of Shelter Island or Dering Harbor [IS NOT] mentioned in the Fact Sheet because the Town was correctly deleted from Appendix 7. However,

Proposed Permit Modification GP-0-15-003 still lists the Town of Shelter Island in Appendix 2. Appendix 2, listing Impaired Segments and Primary Pollutants of Concern, still lists Dering Harbor on page 105. There is no existing pathogen pollution of Dering Harbor-only a "potential" pathogen impairment if a privately-owned sewer treatment plant malfunctions. Therefore Dering Harbor should not be listed in Appendix 2. The general permit modification process is an excellent opportunity for the agency to correct significant errors in the current general permit that have been brought to the agency's attention. The modification of GP-0-15-003 should remove Dering Harbor from Appendix 2]. [5]

***Response 21: This comment is outside the scope of the draft modified general permit, which only proposed changes related to compliance schedules in Part IX. Under those proposed changes, the semi-annual reporting requirements only apply to watersheds listed in Part IX. This comment will be considered as part of the drafting of the general permit renewal to be released for public review and comment on or before November 1, 2016.***

Comment 22: Reference to January 8, 2013, in [Part III.B.1 of the general permit], and elsewhere, appears to be a term from the 2010 SPDES general permit. In regard to the proposed 2015 permit, shouldn't a future date be stated? [2]

***Response 22: Part III.B.1 of the general permit addresses impaired waters for which no TMDL has been completed. This comment is outside the scope of the draft modified general permit, which only proposed changes related to compliance schedules in Part IX. Under those proposed changes, semi-annual reporting requirements apply only to MS4s that discharge to impaired waters for which a TMDL has been completed (i.e. Part IX).***

Comment 23: The Town has no jurisdiction to regulate other municipal corporation's storm water operations even though they impact Riverhead. How then can the Town of Riverhead be responsible for ensuring "no net increase" storm water discharge emanating from other jurisdictions? [2]

***Response 23: This comment is outside the scope of the draft modified general permit, which only proposed changes related to compliance schedules in Part IX. The general permit requirements apply to activities within the covered entity's jurisdiction that have the potential to generate pollutants that can enter their MS4 system and discharge to receiving waters. The "no net increase" requirement applies to activities within the covered entity's jurisdiction that could result in an increase in the discharge of pollutants from their MS4. The covered entity is not expected to regulate other municipalities' stormwater operations.***

Comment 24: The proposed general permit is silent on the issue of clear and definitive "modeling standards" whose effectiveness is in question regarding storm water pollution remediation. Moreover, the proposed general permit is silent on the issue of effective, established and practical criteria which could guide the Town in addressing this proposed sectional requirement. [2]

***Response 24: This comment is outside the scope of the draft modified general permit, which only proposed changes related to compliance schedules in Part IX. NYSDEC will address concerns related to general permit language identified to be ambiguous, confusing or impractical through the work related to the development of the general permit renewal, which must be publicly noticed on or before November 1, 2016.***

Comment 25: Part III.B.2 states, "if the aggregate number is not met, each of the participating MS4s would be deemed non-compliant." How can an MS4 be held responsible for another MS4's POC contribution? Why would an MS4 join a [Regional Stormwater Entity] if it can be held responsible for another MS4's compliance? [2]

***Response 25: This comment is outside the scope of the draft modified general permit, which only proposed changes related to compliance schedules in Part IX. The development of a Regional Stormwater Entity (RSE) is defined in the general permit. Participation in an RSE is voluntary; however, the formation of an RSE enables resource sharing, as well as enhanced funding opportunities among participating MS4 operators. An RSE creates flexibility to site retrofits in locations that achieve a better cost-to-POC reduction ratio on a watershed basis. For MS4 operators working in an RSE, the assigned load will be the sum of the individual loads assigned to the participating entities.***

Comment 26: If the goal is effective state-wide storm water pollution remediation it is incumbent upon the State to provide education, training and resources and an effective criteria and protocol regarding an "MEP" standard, and its effective implementation. This comment is applicable to all sections of the proposed general permit that address development and implementation of a SWMP. [2]

***Response 26: This comment is outside the scope of the draft modified general permit, which only proposed changes related to compliance schedules in Part IX. This comment will be considered as part of the drafting of the general permit renewal to be released for public review and comment on or before November 1, 2016.***

Comment 27: With regard to Part VI.C which states, "fines of up to \$37,500 per day...may be assessed depending upon the nature and degree of the offense," due process consideration demand that the covered entity be notified of the criteria regarding the nature and degree of any particular offense and the range of punitive measures. [2]

***Response 27: This comment is outside the scope of the draft modified general permit, which only proposed changes related to compliance schedules in Part IX. Part VI.C is a standard general permit condition for all SPDES permits. No changes are proposed to Part VI.C as part of this general permit modification.***

Comment 28: With regard to Part VI.J which states, “all NOIs shall be signed by either a principal executive officer or ranking elected official,” language should be added to include their “designee.”[2]

***Response 28: This comment is outside the scope of the draft modified general permit, which only proposed changes related to compliance schedules in Part IX. No changes are proposed to Part VI.J as part of this general permit modification.***

Comment 29: Part VII.A.5.v requires covered entities to utilize available training from sources such as Soil & Water Conservation Districts, Planning Councils, The New York State Department of State, USEPA, and/or the Department to educate the Town Board and Planning and Zoning Boards on low impact development principles, better site design approach, and green infrastructure applications.” Due to limited available resources training is typically attended by personnel directly responsible for implementation of the SWMP. It is incumbent upon the State to provide the educational and technical resources to effectively implement all of the proposed general permit requirements at the State's own cost. [2]

***Response 29: This comment is outside the scope of the draft modified general permit, which only proposed changes related to compliance schedules in Part IX. No changes are proposed to Part VII.A.5.v. This comment will be considered in the drafting of the general permit renewal expected to be released for public review and comment on or before November 1, 2016.***

Comment 30: Part VII.A.5.iv requires covered entities consider natural resource protection, impervious area reduction, maintaining a natural hydrologic condition in developments, buffers or set back distances for protection of environmentally sensitive areas such as streams, wetlands, and erodible soils in the development of environmental plans. This requirement is devoid of a clearly-defined standard and protocol which is needed to achieve general permit compliance regarding the State's goal of protecting water quality. [2]

***Response 30: This comment is outside the scope of the draft modified general permit, which only proposed changes related to compliance schedules in Part IX. No changes are proposed to Part VII.A.5.iv. This comment will be considered in the drafting of the general permit renewal***



***expected to be released for public review and comment on or before  
November 1, 2016.***