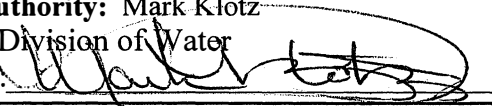


# DOW – IGP 4: New York State Stormwater Management Design Manual 2015 Update Transition Policy

New York State Department of Environmental Conservation, Division of Water

## Division of Water Policy

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### \*\*\* NOTICE \*\*\*

This document has been developed to provide Department staff with guidance on how to ensure compliance with the statutory and regulatory requirements, including case law interpretations, and to provide consistent treatment of similar situations. This document may also be used by the public to gain technical guidance and insight regarding how Department staff may analyze an issue and factors in their consideration of particular facts and circumstances. This guidance document is not a fixed rule under the State Administrative Procedures Act subsection 102(2)(a)(I). Furthermore, nothing set forth herein prevents staff from varying from this guidance as the specific facts and circumstances may dictate, provided staff's actions comply with applicable statutory and regulatory requirements. This document does not create any enforceable rights for the benefit of any party.

**I. Summary:** This guidance provides the criteria an owner or operator of a construction activity, seeking coverage under the *SPDES General Permit for Stormwater Discharges from Construction Activity (GP-0-15-002)* ["CGP"], must meet in order to continue to use a Stormwater Pollution Prevention Plan ["SWPPP"] that was designed in conformance with the 2010 version of the New York State Stormwater Management Design Manual or its equivalent ["Design Manual"], instead of the 2015 version of the Design Manual.

**II. Policy:** The Department acknowledges that a transition period for construction activities is needed in light of the economic impact to certain construction activities that had already started the planning, design and review process with another review authority. In developing this guidance, the Department considered the cost and environmental benefit provided by the 2010 version of the Design Manual, and consistency with past application of other new requirements in previous CGPs.

**Criteria** - Construction activities that are subject to governmental review and approval, where the owner or operator made any application to that governmental entity prior to January 29, 2015 (the effective date of the CGP) and such application included a preliminary SWPPP<sup>1</sup> developed using the 2010 version of the Design Manual, may obtain CGP coverage with a final SWPPP designed in conformance with the 2010 version of the Design Manual (see “2010 version of the Stormwater Management Design Manual” at <http://www.dec.ny.gov/chemical/29072.html>) or its equivalent.

This guidance applies only to construction activities obtaining coverage under the CGP. Permit conditions and SWPPP requirements for construction activities authorized under an individual permit will be established based on the site-specific conditions and the best professional judgment of the permit writer.

**III. Purpose and Background:** The purpose of this guidance is to clarify the criteria that construction activities, seeking coverage under the CGP, must meet in order to continue to use a SWPPP designed in conformance with the 2010 version of the Design Manual or its equivalent.

Urban Stormwater Runoff has been noted as the major source of use impairment for one third of all impaired waters in New York State. In order to mitigate the water quality impacts of urbanization on receiving waters, construction activities that will ultimately disturb one or more acres must obtain coverage and comply with the requirements of the CGP. The CGP requires certain construction activities design and construct stormwater management practices that will mitigate the water quality and quantity impacts after construction is completed.

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<sup>1</sup> Preliminary SWPPP is referenced in the CGP (Part II.B. Permit Authorization) as the level of detail needed for projects required to obtain UPA permits at the time of application for such permits.

In accordance with the CGP, these stormwater management practices must be designed in conformance with the Design Manual or its equivalent.

A revised version of the Design Manual was finalized and made available to the public on January 14, 2015. The updated Design Manual identifies new precipitation data and requirements for redevelopment. As per requirements in the CGP, an owner or operator of a regulated construction activity is required to begin using the new version (2015) of the Design Manual upon the effective date of the CGP - January 29, 2015. However, this did not fully consider the economic impact to construction activities that had already started the planning, design and review process with another review authority prior to January 29, 2015.

Therefore, with consideration for the re-design cost and the fact that construction activities whose stormwater management practices designed in conformance with the previous version (2010) of the Design Manual, or its equivalent, are generally protective of the receiving water bodies, the Department is clarifying that such construction activities, as defined in the Policy section of this document, may obtain CGP coverage with a SWPPP designed in conformance with the 2010 version of the Design Manual or its equivalent.

**IV. Responsibility:** Department staff responsible for the implementation of the CGP will update this guidance document, as necessary. The owners or operators of the construction activity are responsible for documenting that their construction activities are eligible to use the 2010 version of the Design Manual in developing their SWPPP, as outlined in this guidance document and incorporating such documentation into their SWPPPs.

Municipalities authorized under the *SPDES General Permit for Municipally Owned Separate Storm Sewer Systems (MS4s)* are responsible for confirming that SWPPPs for such construction activities have included the documentation demonstrating that the construction activity meets the criteria set forth in this guidance document.

## **V. Procedure:**

**Owner or Operator:** When completing the Notice of Intent (NOI) for a construction activity that meets the criteria included in this guidance document, an owner or operator must answer question 23 as “No” since the post-construction stormwater management practice component of the SWPPP has not been developed in conformance with the 2015 version of the Design Manual. As per Part III.B.2 of the CGP, an owner or operator must also include the reason for this nonconformance and provide supporting information or documentation in the SWPPP. Such documentation could be in the form of planning board meeting minutes, letters acknowledging receipt of the SWPPP by the governmental entity and other correspondence providing comments on the SWPPP. In addition, the owner or operator must indicate that they meet the criteria included in this guidance document when completing the NOI (use the space provided in question 39 of the NOI).

**Department Staff:** When processing the NOI for a construction activity seeking coverage under the CGP with a SWPPP developed in conformance with the 2010 Design Manual or its equivalent, the Department will ensure that the owner or operator has answered question 23 as “No” and has indicated that they meet the criteria listed in this guidance document in the space provided in Question 39.

**MS4s:** When reviewing SWPPPs, the MS4 will confirm that the construction activity meets the criteria for the nonconformance listed in this guidance document and the SWPPP has included the supporting documentation. When completing the MS4 Acceptance Form, under Section VI. Additional Information, the MS4 will note that the owner or operator of a construction activity, prior to January 29, 2015 submitted for review and approval, a preliminary SWPPP designed in conformance with the 2010 version of the Design Manual or its equivalent. The MS4 should also note that the final SWPPP for which the MS4 Acceptance Form is being submitted was reviewed for conformance with the 2010 version of the Design Manual or its equivalent.

## **VI. Related References:**

- NYS Stormwater Management Design Manual (2010 and 2015 versions). See <http://www.dec.ny.gov/chemical/29072.html> for both versions.

- SPDES General Permit for Stormwater Discharges from Construction Activity (GP-0-15-002)

-SPDES General Permit for Municipally Owned Separate Storm Sewer Systems (MS4s)