



Responsiveness Summary  
for  
Public Comments Received  
on the

NEW YORK STATE  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

SPDES PERMIT  
FOR STORMWATER DISCHARGES

from

MUNICIPAL SEPARATE STORM SEWER SYSTEMS (MS4s)

of

NEW YORK CITY

Permit No. NY-0287890

July 31, 2015

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

# **Responsiveness Summary NYC MS4 SPDES Permit NY 028 7809**

## **BACKGROUND**

The Clean Water Act provides that stormwater discharges from large, separate storm sewer systems to waters of the United States are unlawful, unless authorized by a National Pollutant Discharge Elimination System (NPDES) permit. In New York State, EPA has approved the State program which is enacted through the administration of the State Pollutant Discharge Elimination System (SPDES) program.

The SPDES Permit for Stormwater Discharges from Municipal Separate Storm Sewer Systems (MS4s) of New York City (NYC MS4 Permit or final permit), issued pursuant to Article 17, Titles 7, 8 and Article 70 of the Environmental Conservation Law (ECL), will replace the requirements for separate storm sewers currently contained in the SPDES Permits issued for the City's fourteen Waste Water Treatment Plants.

SPDES Permit No. NY 028 7809 (NYC MS4 Permit or final permit) becomes effective on August 1, 2015.

## **INTRODUCTION**

The New York State Department of Environmental Conservation (Department or DEC) has prepared this responsiveness summary to address the comments that were received on the draft versions of the NYC MS4 Permit. The first draft permit was published for public review and comment in the Environmental Notice Bulletin (ENB) on February 5, 2014 for 60 days (Initial Draft Permit). The Initial Draft Permit was modified in response to public comments and re-noticed on March 11, 2015 for 30 days (Revised Draft Permit).

This responsiveness summary generally addresses all relevant comments received on both the Initial and Revised Draft Permits, with the exception of comments dealing with editorial or formatting changes. The comments have been organized to follow the format of the final permit. Frequently raised issues are summarized and presented as one set of comments for brevity. Generally, all other relevant comments have been repeated verbatim with the exception of correction of typographical errors, consistent use of acronyms or abbreviated terms or to clarify the version of the permit referenced by the comment. All comments received as part of the public notice process are available online (<http://www.dec.ny.gov/chemical/102611.html>) on the NYC MS4 Permit webpage.

**COMMENTERS ON THE INITIAL DRAFT PERMIT  
PUBLIC NOTICED ON FEBRUARY 5, 2014**

	Organization	Name	Date
1	Bronx River Alliance	Jessica Schuler	April 4, 2014
2	Empire Dragon Boat Team NYC	Donna Wilson	April 1, 2014
3	Friends of Brook Park	Harry J. Bubbins	April 1, 2014
4	Jamaica Bay Ecowatchers	Daniel T. Mundy	March 24, 2014
5	NRDC/Riverkeeper/NY-NJ Baykeeper	Lawrence Levine	April 7, 2014
6	NYC Audubon	Glenn Phillips	April 4, 2014
7	NYC Law Department – Environmental Law Division (NYC Law)	Sarah Kogel-Smucker	April 7, 2014
8	NYC Soil & Water Conservation District	Shino Tanikawa	March 14, 2014
9	NY-NJ Harbor & Estuary Program Citizens Advisory Committee	Co-Chairs of CAC	April 7, 2014
10	North Shore Waterfront Conservancy of Staten Island, Inc.	Beryl A. Thurman	March 23, 2014
11	Stormwater Infrastructure Matters Coalition (SWIM Coalition)	Robert Crauderueff	March 18, 2014
12	United States Environmental Protection Agency (EPA)	Kate Anderson	April 7, 2014
13	Citizen	Bob Alpern	March 6, 2014
14	Citizen	Phil Jonat	April 7, 2014
15	Citizen	Michele Lewis	April 7, 2014

**COMMENTERS ON THE REVISED DRAFT PERMIT  
PUBLIC NOTICED ON MARCH 11, 2015**

	Organization	Name	Date
16	Bronx Council for Environmental Quality (BCEQ)	Karen Argenti & Dart Westphal	April 10, 2015
17	Friends of Brookpark	Harry Bubbins	April 10, 2015
18	General Contractors Association of New York, Inc.	Denise Richardson	April 10, 2015
19	NRDC/Riverkeeper/NY-NJ Baykeeper	Lawrence Levine Sean Dixon Christopher Len	April 10, 2015
20	NYC Law Department – Environmental Law Division (NYC Law)	Carrie Noteboom	April 10, 2015
21	NYC Water Trail Association	Nancy Brous	April 10, 2015
22	Stormwater Infrastructure Matters (SWIM Coalition)	Julie Welch	April 10, 2015
23	United States Environmental Protection Agency (EPA)	Kate Andersen	May 18, 2015

<b>ACRONYM OR ABBREVIATION LIST<sup>1</sup></b>	
BMP	Best Management Practice
CGP	SPDES General Permit for Stormwater Associated with Construction Activity (Construction General Permit)
City	New York City
CSO	Combined Sewer Overflow
CWA	Clean Water Act
Department	New York State Department of Environmental Conservation
DEC	New York State Department of Environmental Conservation
DEP	New York City Department of Environmental Protection
ECL	Environmental Conservation Law
EDP	Effective Date of Permit
EPA	United States Environmental Protection Agency
final permit	Final version of NY 028 7890 effective August 1, 2015
IDDE	Illicit Discharge Detection and Elimination
Initial Draft Permit	First draft of the NY 028 7890 public noticed on February 5, 2014
LIS	Long Island Sound
LTCP	Long Term Control Plan
MEP	Maximum Extent Practicable
MSGP	SPDES Multi Sector General Permit for Stormwater Discharges Associated with Industrial Activity (Multi Sector General Permit)
MS4	Municipal Separate Storm Sewer System
MS4 GP	SPDES General Permit for Stormwater Discharges from Municipal Separate Storm Sewer Systems (MS4 General Permit)
NPDES	National Pollutant Discharge Elimination System
NYC	New York City
NYC MS4 Permit	Final version of NY 028 7890 effective August 1, 2015.
NYS	New York State
NYSDOT	New York State Department of Transportation
NYSSMDM	New York State Stormwater Management Design Manual
Permittee	New York City
POC	Pollutant of Concern
Revised Draft Permit	Second draft of NY 028 7890 public noticed on March 11, 2015
SPDES	State Pollutant Discharge Elimination System
SWMP	Stormwater Management Program
TMDL	Total Maximum Daily Load
U.S.	United States
WIS	Watershed Improvement Strategy
WLA	Waste Load Allocation

<sup>1</sup> Definitions of the listed terms may be found in Part VI.B of the NYC MS4 Permit

## GENERAL COMMENTS

Comment GC-1: Page 1 - Permittee Name and Address: Because the permit applies to municipal agencies other than the DEP, DEC should issue the permit to the “City of New York” instead of the “City of New York, acting through the New York City Department of Environmental Protection” and to the “Attention” of the mayor and not to the DEP chief operating officer. (Also please note that Kathryn Garcia is no longer the chief operating officer.) [EPA on Initial Draft Permit]

***Response GC-1: The final permit has been issued to the City of New York. By Executive Order No. 429 issued by the Mayor of New York on October 15, 2013, the Commissioner of the DEP was delegated to act on behalf of the City and to coordinate the efforts of City agencies with respect to all matters relating to the City’s Stormwater SPDES Permit requirements including the NYC MS4 Permit. Copies of the permit will be served to both the Mayor of New York and the Chief Operating Executive of DEP. The name of the Permittee contact has been updated in the permit cover page.***

Comment GC-2: The zip code associated with the address of DEP’s main offices at 59-17 Junction Boulevard in Flushing should be updated to 11373 both times it appears on page one of the Revised Draft Permit. [NYC Law on Revised Draft Permit]

***Response GC-2: The final permit reflects the corrected zip code as suggested.***

Comment GC-3: It is curious how this could be considered an Unlisted Action under [the State Environmental Quality Review Act] when even the DEP admits that, “*The Draft Permit applies to the approximately 40% of the City’s land area that is served by the MS4 or by direct drainage, with the rest of the City served by the combined sewer system....Every year, New York City has approximately 45 inches of precipitation, generating an average of 165 billion gallons of stormwater runoff. Approximately half that rainfall/snowmelt makes its way into the City’s combined sewer system, with much of the balance flowing directly into surrounding waterways through the City’s MS4.*” (NYC’s April 2014 comments). Anyone can tell that more than 80 billion gallons of water is large enough impact to qualify for SEQRA. [BCEQ on Revised Draft Permit]

***Response GC-3: The issuance of the NYC MS4 Permit is not a Type I action as it does not trigger any of the Type I thresholds in 6NYCRR 617.4. The NYC MS4 Permit is being issued pursuant to Phase I of the federal stormwater regulations. This permit will consolidate the requirements currently contained in the individual SPDES permits issued to the water pollution control facilities and will require additional control measures that will result in additional environmental protection over current programs having the positive impact of improving water quality. The permit requires***

***development and implementation of programs to minimize the discharge of pollutants from existing stormwater discharges/outfalls. All of these requirements will have a positive impact. A negative declaration has been prepared and is on file.***

Comment GC-4: The City is currently in the midst of an unprecedented period of investment to improve water quality in New York Harbor; since 2002, DEP alone has spent approximately \$10 billion on projects which have been completed or are underway including wet weather expansion at the City's wastewater treatment plants, aggressive nutrient removal, billions of gallons of [CSO] green and grey infrastructure projects, marshland restoration in Jamaica Bay, and numerous other projects. These projects—which have been nearly 100% funded by New York City residents through rate payer funds—have resulted in significant reductions in [CSOs] and in nitrogen discharges from our wastewater treatment plants, and have moved the City toward the goals in PlaNYC, which serves as the blueprint for a sustainable [NYC]. As a result of this work, New York Harbor is healthier than it has been at any time in the last 100 years. One benefit of this success is that more of New York Harbor than ever before is available for recreation and the other use goals set out in the [CWA]. Our recent successes are significant milestones in the effort to continuously improve water quality, but they have come at a very substantial cost to New Yorkers. Since January 2002 alone, water rates have increased by 164%, in large part to fund federally and state mandated projects, and also due to a steep decline in federal and state funding to support such projects. In implementing federal and state mandates, we need to be sensitive to the additional costs imposed on our ratepayers and make sure scarce dollars are invested wisely. [NYC Law on Initial Draft Permit]

***Response GC-4: The Department acknowledges the investments that have been made and that are underway by NYC to improve water quality in New York Harbor. The final permit requires controls to reduce the discharge of pollutants to the MEP. Courts interpreting the phrase “maximum extent practicable” have found it to be clear and unambiguous: it means to the fullest degree technologically feasible, except where costs are wholly disproportionate to the potential benefits.***

Comment GC-5: Although the [Initial] Draft Permit does not explicitly address the provision of emergency services, the City anticipates that the SWMP will include provisions recognizing the need for flexible implementation of stormwater BMPs during emergency situations and asks, therefore, that DEC reasonably accommodate the need to balance stormwater controls with safe and effective emergency response during its review of the City's SWMP. [NYC Law on Initial Draft Permit]

***Response GC-5: The Department recognizes the need to balance stormwater controls with safe and effective emergency response.***

## PART I PERMIT COVERAGE & LIMITATIONS

### PART I.A – PERMIT APPLICATION

Comment I.A-1: Groundwater reforms are needed in [NYC], the Long Island Groundwater System, and [NYS]:

- [NYC]: there's need to extend SPDES permit coverage to groundwater protection, especially in the recharge area of the Jamaica Supply in Brooklyn and Queens;
- The Long Island groundwater system: there's need for integrated permitting, modeling and management encompassing the entire system, in Brooklyn/Queens, Nassau and Suffolk;
- [NYS]: there's need to revive the NYS Water Resources Strategies and the NYS Water Resources Management Council (see Att. A). [Bob Alpern on Initial Draft Permit]

***Response I.A-1: NYS regulations [6 NYCRR 750-1.4(b)] and the CWA do not require permits for discharges of stormwater to groundwater.***

Comment I.A-2: The “NYC owned or operated separate storm sewers that ultimately discharge to waters of New York State through MS4 outfalls owned by NYC” must include any and all connections to a CSO outfall pipe that is downstream from the regulator (e.g., the weirs located throughout the CSOs). Connections to the combined sewer system upstream [of the regulator] are clearly exempt from the [NYC] MS4 permit but regulated outfalls downstream would essentially act as an MS4. Please specify this in the table. [EPA on Initial Draft Permit & Revised Draft Permit]

***Response I.A-2: The final permit clarifies that NYC owned and operated separate storm sewers that are connected to the CSO downstream of the regulator and discharge to surface waters of NYS are regulated under the NYC MS4 Permit (See Part I.A – Table 1 of final permit).***

Comment I.A -3: The permit seems to exclude non-traditional MS4s. EPA suggests adding language similar to the State's [MS4 GP] that would include linear projects, such as those operated by the NYSDOT, which fall within an area of NYC that is regulated by the permit as an MS4. [EPA on Initial Draft Permit & Revised Draft Permit]

***Response I.A-3: Non-traditional MS4s are not regulated by the NYC MS4 Permit unless they are owned or operated by NYC. Non-traditional MS4s that discharge to surface waters that are owned or operated by NYC would be considered to be a part of the NYC MS4 system and would be subject to the terms and conditions of this permit. NYSDOT is authorized under the MS4 GP and would be regulated by DEC under that permit. Interconnections with NYC MS4 would be considered outfalls of the non-traditional MS4 where compliance with the MS4 GP would apply.***

Comment I.A-4: The first sentence of the second paragraph [on page 4 of the Initial Draft Permit] should be changed so that the appropriate statutory standard for MS4 control of pollutants is accurate. CWA Section 402(p)(3)(B) requires that MS4 permits include controls to reduce the discharge of pollutants to the [MEP]. All pollutants from all discharges from an MS4 must be reduced to the MEP, not just storm water discharges of pollutants of concern and illicit discharges of other pollutants. This sentence should read, “The requirements of this permit include controls to reduce the discharges of pollutants to the maximum extent practicable (“MEP”).” [EPA on Revised Draft Permit]

***Response I.A-4: The final permit includes controls that minimize the discharge of pollutants that have a reasonable potential to be present at some amount due to the non-point source nature of stormwater runoff (POCs). All other pollutants present in stormwater discharges are considered to be illicit discharges which must be eliminated. By structuring the permit in this manner, DEC feels that it provides clear, objective and enforceable requirements that focus the Permittee’s program on specific pollutants while still meeting the statutory requirements. Part I.A has been changed to clarify that by reducing POCs to the MEP and eliminating all other pollutants, the permit contains controls that will reduce the discharge of all pollutants to the MEP as required by statute.***

Comment I.A-5: Under state and federal law, SPDES permits for MS4s “shall require controls to reduce the discharge of pollutants to the maximum extent practicable.” Courts interpreting the phrase “maximum extent practicable” have found it to be clear and unambiguous: it means to the fullest degree technologically feasible, except where costs are wholly disproportionate to the potential benefits. DEC is responsible not merely to instruct an MS4 permittee to develop measures that reduce stormwater pollution to the [MEP], but to issue permit terms that “ensure that the measures that any given [MS4] undertake[s] will in fact reduce discharges to the maximum extent practicable.” The Draft Permit, as written, does not meet this obligation. [NRDC/Riverkeeper/NY-NJ Bay Keeper on Initial Draft Permit & Revised Draft Permit]

***Response I.A-5: The final permit contains the requirements for a SWMP that when implemented as prescribed in the permit will reduce stormwater pollutants to the MEP and allows the City some flexibility in selection of the management practices that will be used to meet the SWMP requirements. The permit requires the submission of the SWMP plan to DEC for approval. In addition, DEP has agreed to an environmental monitor that will report directly to DEC on the status of compliance with the permit requirements. DEC’s review of the SWMP and oversight through the environmental monitor will ensure that practices selected to comply with the permit requirements will meet the MEP standard.***



Comment I.A-6: The [Initial] Draft Permit does not ensure that [NYC] will adopt specific practices that reduce pollution system-wide to the “maximum extent practicable,” as also required by law. [SWIM Coalition on Initial Draft Permit]

***Response I.A-6: The NYC MS4 permit contains several provisions that will ensure that NYC will adopt specific practices that will reduce pollution system-wide to the MEP. The final permit contains prescriptive requirements as to the SWMP contents that include a host of required pollution control measures such as public education, IDDE, post construction stormwater management, pollution prevention and good housekeeping of municipal operations, oversight of industrial activities and floatables controls which are intended to reduce the discharge of pollutants to the MEP with priority placed on impaired waters. In addition, the City must ensure no net increase in pollutant load from non-negligible land use changes in storm sewer sheds discharging to impaired waters. Part III.A of the final permit requires the development and submission of the SWMP plan to DEC for review and approval. Part III.B of the final permit requires the City adopt adequate legal authority and dedicate adequate resources to implement the requirements. Furthermore, DEP has agreed to an environmental monitor that will report directly to DEC on the status of compliance with the permit requirements. The Department’s review of the SWMP and oversight through the environmental monitor will ensure that practices selected to comply with the permit requirements will meet the MEP standard.***

Comment I.A-7: It would be better to provide a framework and even specifications of requirements rather than leave it to “best management practices”. [Michele Lewis on Initial Draft Permit]

***Response I.A-7: The final permit provides the framework of requirements for the SWMP and allows the City some flexibility in selection of the specific management practices that will be used to meet the SWMP requirements. The permit requires the submission of the SWMP to DEC for approval. DEC’s review of the SWMP will ensure that practices selected to comply with the permit requirements will meet the MEP standard.***

Comment I.A-8: I am a concerned citizen who would like to reap the benefits of cleaner water within my lifetime. These benefits include the ability to swim in the water on any day at any time for the duration that I wish. It also includes recreational fishing and eating local fish and shellfish from our harbor. I would like the new SWMP to include experimentation with market based solutions. There are many opportunities to create a market in clean water run-off. Innovators and entrepreneurs need a framework to achieve scale in green roofs, rain barrels, and other green infrastructure. [Phil Jonat on Initial Draft Permit]

***Response I.A-8: The goal of the NYC MS4 Permit is to improve water quality to meet water quality standards and the swimmable/fishable goals of the***

***CWA. The public participation requirements contained in Part IV.B of the final permit provide the opportunity for interested stakeholders to recommend new and innovative ideas to be considered during the development of the SWMP. The final permit provides the City the necessary flexibility to consider and implement new and innovative measures for controlling stormwater discharges.***

Comment I.A-9: The City supports the Revised Draft Permit and believes it appropriately balances the need for flexibility in crafting practicable, evidence-based strategies to improve water quality in and around [NYC], with the goal of realizing meaningful reductions in stormwater pollutants through the many programs required under the permit. The Revised Draft Permit, which will be issued to the City as Permittee, touches on programs and operations from essentially every operational agency within the City, and also implicates a number of non-operational agencies with regulatory programs that can impact stormwater controls. It requires 27 separate deliverables beginning three months after the effective date. The [SWMP] itself will be comprised of 28 separate elements, two going well beyond the six minimum control measures set forth in federal law and guidance. As just two examples of the scope of effort required under the permit, our preliminary estimates have identified over 1,000 municipal facilities in the MS4 areas of the City that will be subject to the good housekeeping and pollution prevention requirements in Part IV.G, and there could be as many as 3,000 to 4,000 private commercial and industrial facilities that will be subject to City oversight subject to the provisions in Part IV.H.3. As noted in the City's comment letter dated April 7, 2014, regarding the prior version of the draft permit, the City has already established an interagency task force to gather relevant information and plan for the substantial effort involved in permit implementation. The various timeframes included under the permit will allow the City to complete required tasks and lay the groundwork for success<sup>2</sup>. [NYC Law on Revised Draft Permit].

***Response I.A-9: Comment noted.***

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<sup>2</sup> NYC Law Department – Environmental Law Division, comment letter to DEC on Initial Draft Permit, 7 Apr. 2014, Paragraph B, p 3. “Recognizing the need for extensive coordination, New York City Executive Order No. 429 of 2013, “Coordination and Implementation of Matters Pertaining to Stormwater Controls and Municipal Separate Storm Sewer System Permit Requirements,” directs DEP to coordinate the efforts of City agencies with respect to all matters related to the City’s stormwater SPDES permit requirements and requires all relevant City agencies and entities to facilitate compliance with SPDES permit requirements. The interagency coordination required by Executive Order No. 429 is already well underway with regular interagency task force meetings to plan for implementation of the Draft Permit’s requirements.”

## PART I.B NON-STORMWATER DISCHARGES

Comment I.B-1: The provisions exempting certain non-stormwater discharges that are discharged through the MS4 system are over-broad. Several of the listed categories that relate to runoff from lawn and other landscape watering or irrigation (Sections I.B.2, 10, and 14) are well-known as significant sources of nutrient contamination in urban watersheds. Lawns “contribute greater concentrations of Total N, Total P and dissolved phosphorus than other urban source areas ... source research suggests that nutrient concentrations in lawn runoff can be as much as four times greater than other urban sources such as streets, rooftops or driveways.” Accordingly, these categories should be deleted from the list of exempt non-stormwater discharges. [NRDC/Riverkeeper/NY-NJ Baykeeper on Initial Draft Permit & Revised Draft Permit]

***Response I.B-1: The final permit provides that the listed non-stormwater discharges are allowed unless the Permittee or the Department determines them to be significant contributors of pollutants to the MS4, in which case they are illicit discharges that must be eliminated. The IDDE section of the final permit (Part IV.D.1) has been clarified to include a process or procedure for determining whether these non-stormwater discharges are a significant contributor of pollutants. The annual reporting requirements (Part IV.M.4.d.iv) of the final permit also requires information on the non-stormwater discharges identified during the reporting period.***

Comment I.B-2: The term “ground water” [in Part I.B.5 & I.B.6] should be replaced with “uncontaminated ground water” in both items. [EPA on Initial Draft Permit & Revised Draft Permit]

***Response I.B-2: The final permit states that the listed discharges (i.e. groundwater) are allowed under this permit unless the Permittee or the Department determines them to be a significant contributor of pollutants. Upon finding non-stormwater discharges, the Permittee must make a determination as to whether they are a significant contributor of pollutants. The final permit (Part IV.D.1) requires the IDDE program include a process or procedure describing how the Permittee will determine whether a non-stormwater discharge is a significant contributor of pollutants to surface waters of the State. This would include screening/testing of dry weather flows as outlined in the “Illicit Discharge Detection & Elimination: A Guidance Manual for Program Development and Technical Assessments” (Center for Watershed Protection & Robert Pitt, October 2004). Groundwater discharges noted during dry weather would need to be evaluated to determine if they are a significant contributor of pollutants in order to be considered an authorized non-stormwater discharge. Even if the non-stormwater discharges are determined not to be a significant contributor of pollutants, the SWMP must include public education and outreach activities directed at reducing pollution from these potential sources (see Part I.B).***

Comment I.B-3: Sections IV.D.1 & IV.D.9 provide that the SWMP must address otherwise exempt non-stormwater discharges listed in Section I.B. if they “are identified by the Permittee as a substantial contributor of pollutants to waters of the State.” The permit should require the SWMP to include a quantitative analysis of whether these sources are substantial contributors of pollutants. [NRDC/Riverkeeper/NY-NJ Baykeeper on Initial Draft Permit & Revised Draft Permit]

***Response I.B-3: The final permit (Part IV.D.1) requires that the IDDE program include a process/procedure for making a determination as to whether non-stormwater discharges encountered are significant contributors of pollutants. This would include screening/testing of dry weather flows as outlined in the “Illicit Discharge Detection & Elimination: A Guidance Manual for Program Development & Technical Assessments” (Center for Watershed Protection & Robert Pitt, October 2004). The IDDE requirement must be applied to non-stormwater discharges encountered unless determined by the Permittee not to be significant contributors of pollutants. Records documenting the determination must be maintained by the Permittee and information on the non-stormwater discharges identified during the reporting period must be reported as part of the annual reporting requirements (Part IV.M.4.d.iv) of the final permit.***

## **PART I.E – EXCLUSION**

Comment I.E-1: DEC should consider specifying that DEP maintain a database of outfalls which are not owned by NYC. This would be helpful to the overall program. DEP will identify those outfalls during mapping of its MS4 and CSO systems [EPA on Initial Draft Permit & Revised Draft Permit]

***Response I.E-1: DEC agrees that maintaining a data base of outfalls which are not owned or operated by NYC would be useful and the City currently has a program that includes outfalls that are privately owned. However, since this permit addresses stormwater discharges from City owned or operated separate storm sewers, mapping, track down and management of privately owned outfalls is beyond the scope of this permit to mandate.***

## PART II. SPECIAL CONDITIONS

### PART II.A – DISCHARGE COMPLIANCE WITH WATER QUALITY STANDARDS

Comment II.A-1: Several comments were received on the Initial Draft Permit that indicate that the draft permit must clearly and unequivocally prohibit discharges that are known to cause or contribute to existing water quality impairments. Comments received on the Revised Draft Permit indicate that DEC did not go far enough to protect NYC waters and continue to urge the DEC to revise Section II to expressly prohibit discharges that cause or contribute to water quality standards violations.

[NRDC/Riverkeeper/NY-NJ Bay Keeper][Jamaica Bay Ecowatchers][Friends of Brook Park][Bronx River Alliance][NY/NJ HEP][NYC Audobon][Swimmable NYC/Phil Jonat][Empire Dragon Boat Team NYC][SWIM Coalition] [Phil Jonat]

***Response II.A-1: It is not necessary for the permit to contain a provision expressly prohibiting discharges that cause or contribute to water quality standards violations because the ECL already contains such a prohibition. Specifically, §17-0501 states “[i]t shall be unlawful for any person, directly or indirectly, to throw, drain, run or otherwise discharge into such waters organic or inorganic matter that shall cause or contribute to a condition in contravention of the standards adopted by the Department pursuant to section 17-0301.” In addition, by issuance of this permit, per 6 NYCRR 750-2.1(b), DEC has made a determination that compliance with the specified permit provisions will reasonably protect water quality standards. The NYC MS4 Permit does not authorize discharges from the MS4 that will cause or contribute to an exceedance of water quality standards. In addition to requirements to reduce the discharge of pollutants to the MEP, the NYC MS4 Permit incorporates language clarifying that compliance with the conditions of the permit will control discharges as necessary to meet applicable water quality standards. DEC believes that the CWA does not mandate a complete ban on discharges into a waterway that is in violation of existing water quality standards and the issuance of a permit that would result in a net reduction of the pollutant causing the impairment is permissible. The final permit includes requirements for the City to develop and implement required pollution control measures to the MEP to reduce the pollutants causing the impairment from current levels. The final permit provisions in Part II.B.1 also includes the “no net increase requirement” such that the reductions achieved through the required pollution control measures are not negated by new development. The permit does not authorize new discharges of the pollutant causing the impairment and includes provisions that will result in a net reduction of that pollutant and is therefore lawful under the CWA without an express prohibition contained within the permit.***

***Satisfaction of permit provisions notwithstanding, Part II.A of the final permit asserts that if operation pursuant to the permit causes or***

***contributes to a condition in contravention of state water quality standards or if the Department determines that a modification of the permit is necessary to prevent impairment of the best use of the waters or to assure maintenance of water quality standards or compliance with other provisions of ECL Article 17, or the Act or any regulations adopted pursuant thereto (see section 750-1.24 of this Part), the Department may require such a modification and the DEC Commissioner may require abatement action to be taken by the Permittee.***

Comment II.A-2: Several comments were received on the Initial Draft Permit stating the permit does not hold the City accountable for achieving pollutant load reductions sufficient to ensure that MS4 discharges cease to cause or contribute to such impairments and must establish specific compliance schedules with deadlines for elimination of discharges that cause or contribute to existing water quality impairments regardless of whether a TMDL has been developed or not. Comments received on the Revised Draft Permit indicate that DEC did not go far enough to protect NYC waters and continue to urge the DEC to consider stronger requirements on water quality improvement with quantifiable pollutant reduction targets and timelines.

[NRDC/Riverkeeper/NY-NJ Bay Keeper][Jamaica Bay Ecowatchers][Friends of Brook Park][Bronx River Alliance][NY/NJ HEP][NYC Audobon][Swimmable NYC/Phil Jonat][Empire Dragon Boat Team NYC][SWIM Coalition][Michele Lewis][Phil Jonat] on Initial Draft Permit. [Friends of Brook Park][NRDC/Riverkeeper/NY-NJ Baykeeper] on Revised Draft Permit.

***Response II.A-2: The City is held accountable for achieving pollutant load reductions to restore water quality through the combined efforts required by both the NYC MS4 Permit and NYC CSO Consent Order and the associated CSO LTCPs. The impaired waters to which NYC discharges were removed from the 303(d) list, as development of a TMDL was determined not necessary because other required control measures (CSO LTCPs) are expected to result in restoration in a reasonable period of time. The TMDL process establishes the pollutant load reductions necessary to achieve water quality standards and sets the waste load allocation for permitted sources. Absent a TMDL, there is no meaningful basis for setting a numeric pollutant load reduction requirement in the NYC MS4 Permit. However, DEC has incorporated non-numeric effluent limits into the NYC MS4 Permit that will result in a reduction in pollutant levels over current conditions that will complement the efforts made through the NYC CSO Consent Order and associated CSO LTCPs.***

Comment II.A-3: Under state and federal law, in addition to meeting the “maximum extent practicable” standard, SPDES permits must also include any further pollution control measures that are needed to ensure compliance with state water quality standards.[NRDC/Riverkeeper/NY-NJ Baykeeper on Revised Draft Permit]

***Response II.A-3: The NYC MS4 Permit meets all state and federal requirements. The requirements found in Part II of the final permit include further control measures for impaired waters. These constitute the water quality based effluent limits while requirements to reduce the discharge of pollutants to the MEP are set forth in Parts IV.A through J of the final permit. Furthermore, the final permit does not authorize new discharges of the pollutant causing an existing impairment and includes provisions that will result in a net reduction of that pollutant. Attainment of water quality standards is an incremental process consistent with §402(p)(3)(b) of the CWA so long as the Permittee reduces the discharge of pollutants to the MEP. Water quality standards attainment in waters to which NYC MS4s discharge will require an iterative approach, and the permit will operate in conjunction with other efforts such as CSO LTCPs.***

Comment II.A-4: The new paragraph at the beginning of Part II.A of the Revised Draft Permit is merely a statement of DEC's belief that the permit terms will ensure compliance with water quality standards. This does not change the fact that the operative terms of the permit do not ensure compliance with water quality standards. The operative standards contained within Part II.A and B are identical to corresponding terms of DEC's Small MS4 General Permit which are currently under review by the New York Court of Appeals in *NRDC v. DEC* (No. APL-2015-00043). A decision from the Court of Appeals is anticipated imminently. If the Court rules for the Appellants, it will be beyond dispute that the terms of the Revised Draft Permit are unlawful and must be revised. We strongly urge DEC to wait for a ruling in *NRDC v DEC* before finalizing the NYC MS4 Permit, and to revise the draft NYC MS4 Permit as needed to comply with the Court's holding. [NRDC/Riverkeeper/NY-NJ Baykeeper on Revised Draft Permit]

***Response II.A-4: The decision from the Court of Appeals on NRDC v DEC found that NRDC's challenges to the lawfulness of the Small MS4 General Permit were without merit with regard to compliance with water quality standards.***

Comment II.A-5: The section on Discharge Compliance with Water Quality Standards (Part II.A) should be written such that requirements are clear, quantitative, and enforceable. This portion of the permit needs to be more explicit as to what the [P]ermittee is required to do upon determination that a discharge directly or indirectly causes or has the reasonable potential to cause or contribute to the violation of a water quality standard. As written, it is only triggered by the Department's notification to the [P]ermittee. What is the mechanism for ensuring that future discharges do not directly or indirectly cause or contribute to a violation of a water quality standard? The permit says the actions taken by NYC must be documented in the SWMP; however, the current permit provides several years to develop the SWMP. A clearer, more tangible requirement should be written into this section. [EPA on Initial Draft Permit & Revised Draft Permit]

**Response II.A-5: DEC fully expects that compliance with the terms and conditions of the final permit will ensure that discharges from the NYC MS4 will not cause or contribute to an exceedance of water quality standards. Part V.E requires the Permittee take all reasonable steps to minimize or prevent any discharge in violation of the permit which has a reasonable likelihood of adversely affecting human health or the environment. However, in the event that information becomes available that despite compliance with the terms and conditions of the permit, the MS4 is found to cause or contribute to a violation of water quality standards this section of the final permit provides the Department with the authority to require additional action. The final permit is not explicit as to the actions that need to be taken, as this will be largely dependent on the circumstances that caused the discharge to directly or indirectly cause or have the reasonable potential to cause or contribute to a violation of an applicable water quality standard. The final permit restructures this paragraph so that it is clear that the Permittee is expected to take all necessary actions to ensure future discharges do not directly or indirectly cause or contribute to a violation of water quality standards without notification by the Department.**

Comment II.A-6: We note that [NYS] law at ECL §750-1.11(a)(5)(i) further requires that “the provisions of each issued SPDES permit shall ensure compliance with... any more stringent limitations, including those necessary to meet water quality standards, guidance values, effluent limitations or schedules of compliance, established pursuant to any state law or regulation consistent with section 510 of the Act, or the requirements of 40 CFR Part 132.” There is no exception for stormwater permits to this state requirement. [EPA on Initial Draft Permit]

**Response II.A-6: The NYC MS4 Permit meets all state and federal requirements. The requirements found in Part II of the final permit include further control measures for impaired waters. These constitute the water quality based effluent limits while requirements to reduce the discharge of pollutants to the MEP are set forth in Parts IV.A through J of the final permit. Furthermore, the final permit does not authorize new discharges of the pollutant causing an existing impairment and includes provisions that will result in a net reduction of that pollutant.**

Comment II.A-7: DEC is legally obliged to include water quality-based requirements in this permit, as in all SPDES permits, regardless of whether or not the agency has already developed a TMDL for the receiving waterbody. [NRDC/Riverkeeper/NY-NJ Baykeeper on Revised Draft Permit]

**Response II.A-7: The final permit (Part II.B) contains the water quality-based effluent limits as required by state and federal requirements. In addition to the required pollution control measures contained in Parts IV.A through J that will be implemented to the MEP, Part II.B.1 of the final permit contains additional limitations (no net increase) to ensure the CSO**



***LTCP is successful in achieving water quality standards and meets the requirements of 6 NYCRR §750-1.11(a)(5). In the event that new information becomes available that indicates that the CSO LTCP will not restore water quality as expected. Part II.B.2 was added to the Initial Draft Permit to require the development of additional or customized BMPs for each control measure in Parts IV.A thru I to address the POCs causing the impairment identified in the CSO LTCP.***

Comment II.A-8: The challenges arising from the complexity and scope of municipal stormwater management have led EPA to recommend that BMPs, not specific numerical targets, are the appropriate means of implementing TMDL effluent limitations in SWMPs, and the same considerations apply to impaired waters with approved CSO LTCPs. The Revised Draft Permit grants the City necessary flexibility to implement effective and cost-efficient BMPs and other remedial measures tailored to the unique circumstances of individual water bodies on a prioritized basis. By requiring the City to implement such BMPs within the shortest reasonable time, the Draft Permit ensures that the City will take action to remediate ongoing impairment without undue delay. [NYC Law on Revised Draft Permit]

***Response II.A-8: Comment noted.***

## **PART II.B – IMPAIRED WATERS**

**Comment II.B-1:** Several comments were submitted on the sufficiency of the Initial Draft Permit's "no net increase" requirement to protect water quality arguing that it maintains water quality rather than striving to improve it. [EPA on Initial Draft Permit][NRDC/Riverkeeper/Baykeeper on Initial Draft Permit and Revised Draft Permit]

***Response II.B-1: The Department disagrees with this characterization. The NYC MS4 Permit includes a host of required pollution control measures such as public education, IDDE, post construction stormwater management, and pollution prevention and good housekeeping of municipal operations, oversight of industrial activities and floatables controls which are intended to reduce the discharge of pollutants to the MEP with priority placed on impaired waters. The no net increase requirement is only one aspect of the permit and is not intended to maintain the status quo but rather augment the required pollution control measures to ensure that the reductions achieved with the required pollution control measures are not negated by increased loading associated with non-negligible land use changes. The "no-net increase" provision is considered to be a more stringent limitation necessary to meet water quality standards.***

Comment II.B-2: To the extent any commenters on the [Initial] Draft Permit suggest that the [f]inal permit should impose a stricter requirement than a no net increase standard

for discharges to impaired waters, meeting such a requirement is not feasible at this time. The [Initial] Draft Permit includes a host of requirements, such as public education, [IDDE], post construction stormwater management, and pollution prevention and good housekeeping of municipal operations, which are intended to reduce the discharge of pollutants of concern into impaired waters. Achieving these requirements in the time-frame set forth in the [Initial] Draft Permit will require significant [NYC] resources, and stricter requirements are unwarranted, particularly since neither the City nor DEC has had a chance to evaluate the effectiveness of the programs that will be implemented under the [Initial] Draft Permit. Moreover, the monitoring and assessment required by the [Initial] Draft Permit will provide the necessary baseline to determine whether additional controls may be warranted to comply with [CWA] requirements in the future. [NYC Law on Initial Draft Permit]

***Response II.B-2: DEC agrees that the requirements contained in the Initial Draft Permit as referenced by the commenter are expected to reduce the discharge of pollutants of concern to impaired waters. However, in response to comments received on the Initial Draft Permit indicating that the Initial Draft Permit did not adequately address the interaction between the SWMP and CSO LTCPs in addressing stormwater related impairments to water bodies, the final permit (Part II.B.2) includes additional requirements to ensure that the City's program to control discharges from its MS4 complements water quality improvement efforts in impaired waters with approved CSO LTCPs where MS4s are determined to be a significant contributor of pollutants. These provisions ensure that the SWMP will benefit from the work in the CSO LTCPs and complement them in addressing POCs in impaired waters where there are no TMDLs for such POCs.***

Comment II.B-3: The provision that “no net increase” is to be evaluated “after considering impact of [controls on non-MS4s]” as specified in the last line of Section II.B.1 renders the no net increase requirement virtually meaningless as a means for protecting water quality. It allows for increases over current MS4 pollution levels if there are reduced pollutant loads from CSO discharges or other sources; in effect, this allows the City's separate storm sewer system to cancel out any gains achieved by the City's CSO program or other pollution reduction efforts. In practice, for waterbodies impaired both by CSO discharges and MS4 discharges, for which the CSO [Consent] Order requires reductions in CSO discharges, this provision will allow substantial increases in MS4 discharges, even when those increases inhibit the ability to achieve water quality standards compliance in the receiving waters. DEC must revise the Draft Permit to prohibit non-MS4 offsets of increased MS4 discharges, except where the net result is compliance with water quality standards. [NRDC/Riverkeeper/NY-NJ Baykeeper on Initial Draft Permit and Revised Draft Permit]

***Response II.B-3: The final permit does not include reference to “consideration of impacts of non-MS4 sources of POCs to the impaired waters and planned controls for those sources” as suggested. The***

***required pollution control measures combined with the no net increase provision are expected to achieve reductions in the MS4 contribution to ensure that the CSO LTCP is successful in restoring water quality rather than canceling out any gains achieved.***

Comment II.B-4: The Draft Permit should be revised to clarify that land disturbances that are cumulatively equal to or greater than one acre throughout an impaired watershed constitute “non-negligible land use changes.” The cumulative effects of many projects over the years can be massive: A recent, peer reviewed study by researchers at the U.S. Forest Service and [the State University of New York College of Environmental Science and Forestry] concluded that, from 2004-2009 [NYC] actually lost 5.5% of its tree and shrub cover (equal to 1.2% of the City’s total area), and increased impervious cover by 2.3% (equal to 1.4% of the [C]ity’s total area). [NRDC/Riverkeeper/NY-NJ Baykeeper on Initial Draft Permit & Revised Draft Permit]

***Response II.B-4: The no-net increase of the POC applies to non-negligible land use changes or changes to stormwater management practices within the MS4 area draining to the impaired waters. DEC agrees that cumulative effects of projects should be considered. The construction threshold study in Part IV.F.4 is being done to determine the appropriate threshold for construction and post-construction stormwater management. The threshold study will consider the cumulative impacts and provide information as to what land disturbance is non-negligible.***

Comment II.B-5: Section II.B.1.b.i. -- Compliance with the [NYSSMDM] should not be deemed compliance with the “no net increase” requirement for floatables, since the [NYSSMDM] makes no reference to designing for floatables control. [NRDC/Riverkeeper/NY-NJ Baykeeper on Initial Draft Permit & Revised Draft Permit]

***Response II.B-5: The Department disagrees with this characterization. The NYSSMDM contains provisions for floatables control in the design of stormwater management practices. These provisions include pretreatment, settling or filtration, outlet controls and maintenance that will effectively capture and remove floatables and settleable trash and debris prior to discharge.***

Comment II.B-6: Part II.B.1.b.iii [of the Initial Draft Permit] states that the Permittee need not “incorporate a pollutant load analysis in the SWPPP review process” if “the Permittee determines that the project is not likely to significantly increase pollutant loads to the waterbody.” This clause should be eliminated. How is the Permittee supposed to determine that a project is not likely to significantly increase pollutant loads unless a “pollutant load analysis” is conducted? [NRDC/Riverkeeper/NY-NJ Baykeeper on Initial Draft Permit]

***Response II.B-6: In response to this comment, the Revised Draft Permit clarified that the pollutant load analysis is not required for sewer projects***

***that do not result in an increase in impervious area or a change in land use that would result in an increase in pollutant load. A pollutant load analysis performed as part of the City Environmental Quality Review process for sewer projects may be used to meet the pollutant load analysis requirement. (See Comment II.B-7 for additional comments on the Revised Draft Permit language)***

Comment II.B-7: Th[e] provision [contained in Part II.B.1.b.iii.of the Revised Draft Permit] states that, “For sewer upgrade and extension projects constructed by or on behalf of the Permittee, the pollutant load analysis is not required for projects that do not result in an increase in impervious area or a change in land use that increases the pollutant load.” This clause should be eliminated. Sewer upgrade and extension projects, almost by definition, are likely to increase pollutant loads because they are designed to capture more runoff in the MS4 system and discharge it through MS4 outfalls to city waterways, irrespective of any changes in the land use or increases in impervious area. The permit must require DE[P] to avoid, mitigate, or offset such increase pollutant loads by retrofitting the area draining to the new or expanded sewer lines and/or outfalls. (By way of contrast, we note that DEC’s Small MS4 General Permit [Section VII.A.6.b.] requires that MS4s must “consider and incorporate runoff reduction techniques and green infrastructure in the routine upgrade of the existing stormwater conveyance systems.”)[NRDC/Riverkeeper/NY-NJ Baykeeper on Revised Draft Permit]

***Response II.B-7: The NYC MS4 Permit (Part IV.G.2) requires the Permittee to consider and incorporate, where feasible, cost effective runoff reduction techniques and green infrastructure in planned municipal upgrades including municipal right of ways. This would include sewer extension projects. DEC disagrees with the characterization that sewer upgrades and extension projects will increase pollutant loads that must be offset by retrofits. Sewer extension projects that do not increase the impervious area or change in land use are not expected to result in increased pollutant loads to the water body. While sewer improvement projects may increase the amount of rainfall captured and discharged through the MS4 system, they are not introducing new pollutants to the receiving water.***

Comment II.B-8: Section II.B.1.c. – The phrase “levels of pollutant control equivalent to the [NYSSMDM] (2010) applicable to control of the relevant POCs” does not have any clear meaning in this context. It must be revised to state an objective pollution control standard, such as a numeric performance standard for runoff reduction. The [NYSSMDM] (sec. 3.3) only defines pollutant removal performance for TSS (80%) and TP (40%). But, as per Appendix 2 of the Draft Permit, these are not the relevant POCs causing impairment in [NYC]. [NRDC/Riverkeeper/NY-NJ Baykeeper on Initial Draft Permit and Revised Draft Permit]

***Response II.B-8: The NYSSMDM utilizes the removal efficiencies of 80% for Total Suspended Solids and 40% for Total Phosphorus as the minimum pollutant removal efficiency for incorporation of stormwater management***

***practices into the NYSSMDM. The practices specified in the NYSSMDM are also effective in removing other pollutants but the efficiency has not been specified. The final permit requires the City to propose the removal efficiencies that will be accepted for demonstrating no-net increase for those other pollutants and any other time a pollutant load analysis may be necessary to provide consistency in the review process. The pollutant load analysis for demonstrating no-net increase of POCs to impaired waters is in addition to the requirements for post construction stormwater treatment required for new development and redevelopment projects under Part IV.F. The final permit clarifies that the no-net increase requirement is in addition to the minimum control measures described in Parts IV.A thru J.***

Comment II.B-9: Section II [of the Initial Draft Permit] is arbitrary and capricious insofar as it creates stricter requirements to address water quality standards violations that are identified in the future, as compared to those that have already been identified...., under the [Initial Draft Permit], the City would actually be required to eliminate discharges that cause or contribute to a water quality standard violation if the MS4's contribution to the impairment is identified in the future – but would be required only to maintain the status quo where the contribution to the impairment has already been identified. This distinction is entirely arbitrary and in violation of the law. [NRDC/Riverkeeper/NY-NJ Baykeeper on Initial Draft Permit]

***Response II.B-9: The final permit does not maintain the status quo as suggested (See Response to Comment II.B-1). Section II.B.2 of the Initial Draft Permit was removed because it prescribed future requirements for TMDLs and deprived the Permittee the ability to comment on the substance of the requirement. Future TMDLs will be incorporated into the permit as part of a permit modification or renewal.***

Comment II.B-10: Section II.B.2 [of the Initial Draft Permit], which concerns compliance with any future TMDLs, should be revised to state that any SWMP modifications designed to implement a TMDL must be subject to DEC review, public notice and comment and an opportunity for a hearing, and DEC approval; and must include all necessary elements of compliance schedules under 6 NYCRR § 750-1.14. [NRDC/Riverkeeper/NY-NJ Baykeeper on Initial Draft Permit]

***Response II.B-10: Requirements to implement future TMDLs will be incorporated into the NYC MS4 permit as part of a permit modification or renewal. This will provide the opportunity for public notice and comment and an opportunity for a hearing as suggested.***

Comment II.B-11: Regarding implementation of TMDLs, DEC completely deleted Section II.B.2, which appeared in the Initial Draft Permit (and appears in the state's Small MS4 General Permit), and which concerned compliance with any future TMDLs. That provision should be reinstated and revised to state that any SWMP modifications designed to implement a TMDL must be subject to DEC review, public notice and

comment and an opportunity for a hearing, and DEC approval; and must include all necessary elements of compliance schedules under 6 NYCRR § 750-1.14. We can only assume that DEC deleted this provision because no [NYC] waters are currently slated for development of TMDLs. However, TMDLs are, in fact, required by law for many of these waters and, regardless of whether DEC currently intends to comply with that requirement, the permit should include a provision for implementation of TMDLs if and when they are developed.[NRDC/Riverkeeper/NY-NJ Baykeeper on Revised Draft Permit]

***Response II.B-11: The impaired waters to which NYC discharges were removed from the 303(d) list as development of a TMDL was determined not necessary because other required control measures are expected to result in restoration in a reasonable period of time. These waters are being addressed through the NYC CSO Consent Order and the associated CSO LTCPs. The NYC MS4 Permit contains provisions that complement the CSO LTCP strategy. In the event that new information becomes available that indicates the CSO LTCPs will not restore water quality as expected, and a TMDL is completed, appropriate provisions will be incorporated into the permit at the time of renewal or modification. The NYC MS4 Permit does not incorporate requirements that deny the opportunity for the Permittee to comment on the substance of the requirement.***

Comment II.B-12: DEC must revise the permit to establish [WIS] requirements, similar to the nitrogen WIS provisions of the Small MS4 General Permit, as well as associated schedules of compliance pursuant to applicable requirements of federal and state law, for discharges of nitrogen to [LIS]. It must do so to ensure compliance with the 10% pollutant load reduction target for urban runoff included in the LIS Nitrogen TMDL. Although the LIS TMDL labeled this pollution reduction target as a “Load Allocation” for unregulated non-point sources, rather than a WLA for point sources, the MS4s responsible for these discharges, including NYC, are now regulated point sources rather than unregulated non-point sources. Accordingly, the TMDL specifies numeric pollutant reductions (i.e., 10%) that must be achieved by MS4s in order to attain water quality standards in LIS. DEC is obliged to include such target as a binding effluent limitation in MS4 permits for discharges to [LIS], including the NYC MS4 permit. By failing to do so, the permit instead relegated the [LIS] to the “ensure no net increase in its discharge” of nitrogen standard in part III.B.1, which is inconsistent with the TMDL and therefore does not comply with federal and state law.[NRDC/Riverkeeper/NY-NJ Baykeeper on Revised Draft Permit]

***Response II.B-12: The LIS is listed in Appendix 2 of the final permit as impaired for nitrogen. The final permit requires the City implement the required pollution control measures contained in Parts IV.A through J along with the no-net increase requirements to achieve the necessary reductions in nitrogen load to LIS. Compliance with these permit conditions is consistent with the TMDL recommendations.***

Comment II.B-13: Save the Sound has submitted a petition to EPA to revise the [LIS] TMDL. A new TMDL would necessarily include a [WLA] for MS4s, and the [NYC] MS4 permit must ensure compliance with such WLA. [NRDC/Riverkeeper/NY-NJ Baykeeper] on Revised Draft Permit].

***Response II.B-13: Requirements to implement future TMDLs will be incorporated into the NYC MS4 Permit as part of a permit modification or renewal. This will provide the opportunity for public comment and opportunity for a hearing as suggested.***

Comment II.B-14: The challenges arising from the complexity and scope of municipal stormwater management have led EPA to recommend that BMPs, not specific numerical targets, are the appropriate means of implementing TMDL effluent limitations in SWMPs and the same considerations apply to impaired waters with approved CSO LTCPs. The Revised Draft Permit grants the City necessary flexibility to implement effective and cost-efficient BMPs and other remedial measures tailored to the unique circumstances of individual water bodies on a prioritized basis. By requiring the City to implement such BMPs within the shortest reasonable time, the [Revised] Draft Permit ensures that the City will take action to remediate ongoing impairment without undue delay. [NYC Law on Revised Draft Permit]

***Response II.B-14: Comment noted.***

## **PART II.B.2 - IMPAIRED WATERS WITH APPROVED COMBINED SEWER OVERFLOW LONG TERM CONTROL PLANS (CSO LTCPs)**

In response to comments<sup>3</sup> received on the Initial Draft Permit related to the need for integration of the MS4 permit requirements with other pollution control efforts currently under development by the City and the State, Part II.B.2 was added to the Revised Draft Permit (replacing Part II.B.2 – Future TMDLs in the Initial Draft Permit). This section requires additional measures in the event that an approved CSO LTCP does not predict compliance with applicable water quality standards, which includes any finally promulgated water quality standards after the issuance of the permit, and where stormwater contributions from the MS4 are expected to be a significant contributor of the impairment identified in the LTCP. This section of the Revised Draft Permit requires additional or customized BMPs to address the pollutants of concern identified in the approved LTCP. This approach is expected to complement the CSO LTCP to ensure water quality is restored. The following comments were received on this new section that was added to the Revised Draft Permit:

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<sup>3</sup> [NRDC/Riverkeeper/NY-NJ Baykeeper][Bronx River Alliance][NY/NJ HEP][NYC Audobon][Swimmable NYC/Phil Jonat][Empire Dragon Boat Team NYC][Friends of Brook Park][SWIM][NYC SWDC]

Comment II.B.2-1: Part II.B.2 of the Revised Draft Permit requires coordination only with CSO abatement efforts, not with other pollution control efforts, such as under Superfund and brownfields programs.[NRDC/Riverkeeper/NY-NJ Baykeeper on Revised Draft Permit]; and,

DEC needs to ensure that the myriad of water quality improvement programs underway in the City work together to achieve success. For many waterbodies affected by MS4 pollution, the City is already developing (or has submitted to DEC) [CSO LTCPs]; in those plans, the City often points to MS4 pollution as a reason why solving CSOs, alone, will not completely clean up the water body. There are also efforts, such as the floatables control program, the Green Infrastructure Plan, and brownfields cleanup efforts and superfund remediation. We believe it is critical that these related or overlapping programs must be coordinated well for the efficient use of public resources, effective solutions, and better understanding by the public of the City's efforts. We recommend that DEC explicitly require the City to create a mechanism for coordinating its MS4 program with these other efforts. [SWIM Coalition on Revised Draft Permit]. We urge DEC to consider stronger requirements on coordination with other water quality improvement programs, including the CSO [LTCPs], Open Industrial Use Study, Brownfields and others. [Friends of Brook Park on Revised Draft Permit][NYC Water Trail Association on Revised Draft Permit]

***Response II.B.2-1: The Department agrees that integrated planning can be a valuable tool that will assist NYC to achieve the human health and water quality objectives of the CWA as suggested. However, as noted in EPA's, June 5, 2012 memo, "Integrated Municipal Stormwater and Wastewater Planning Approach Frame Work", the integrated planning approach is voluntary. The responsibility to develop an integrated plan rests with the municipality that chooses to pursue this approach. In their comments on the Initial Draft Permit, NYC indicated that, "A final permit that explicitly mandated other water quality efforts and required the City to achieve the complex task of integrating such efforts before a final SWMP is adopted would unnecessarily mire the development of the SWMP in the resolution of other CWA compliance matters." <sup>4</sup> The final permit allows for integrated planning and the Department will work with EPA and NYC to implement and utilize this approach to the extent allowable. The Department will entertain ideas as to how to strengthen integration among other water quality improvement programs outside the permit process.***

Comment II.B.2-2: The required coordination with CSO abatement efforts applies only after there is an approved [CSO] LTCP. Coordination is essential during the development of [CSO] LTCPs, as emphasized in our comments on the [Initial] Draft Permit. Also, the draft [CSO] LTCPs submitted in the last year underscore the need for such coordination. [NRDC/Riverkeeper/NY-NJ Baykeeper on Revised Draft Permit].

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<sup>4</sup> NYC Law Department – Environmental Law Division, comment letter to DEC on Initial Draft Permit, 7 Apr. 2014, Paragraph C(e), p 7.



The [P]ermittee should take action as soon as it is determined that its MS4s are a significant contributor to a [POC], not after a [LTCP] is approved. [EPA on Revised Draft Permit]

***Response II.B.2-2: It is expected that there will be coordination efforts made during the development of the CSO LTCP and SWMP long before the approval of the CSO LTCP. The approval of the CSO LTCP represents the Department's concurrence that the NYC MS4 is a significant contributor of a pollutant causing the impairment identified in the CSO LTCP and signals that the SWMP must contain the enhanced requirements specified in Part II.B.2.***

Comment II.B.2-3: [Part II.B.2 of the Revised Draft Permit] only requires consideration of "non-structural" controls on MS4 discharges. This limitation should be eliminated. All controls, including structural and nonstructural, must be evaluated. (We further note that the permit includes no definition of nonstructural controls. This term is often used to refer to things such as public education campaigns and other behavioral changes, which do not involved physical changes to the sewer system or to impervious spaces draining into the MS4 system. The latter sorts of measures must be included.) [NRDC/Riverkeeper/NY-NJ Baykeeper on Revised Draft Permit]

***Response II.B.2-3: The provisions of Part II.B.2 of the final permit contains a reasonable and rational approach to managing and reducing POCs in urbanized areas. This approach will gather information necessary to identify the likely sources of POCs and associated transport pathways to receiving waters. Properly accounting for and identifying potential sources is the first step in working toward minimizing pollutants from controllable sources. The most easily identifiable and controllable sources should be addressed first before more costly structural measures are required. Furthermore structural retrofits have not been completely dismissed as the commenter suggests. The provisions in Part II.B.2.a.iv includes identifying opportunities for implementing green infrastructure pilot projects and other structural retrofits. This is intended to coordinate with the green infrastructure efforts that the City is currently undertaking as part of its CSO LTCP. The information gained as part of Part II.B.2 will better quantify the potential sources of the POC causing the impairment and better inform a TMDL process if it is determined that a TMDL is needed. Non-structural controls may include visual surveys of potential sources, GIS analysis of land use, more frequent dry weather screening of outfalls in Priority MS4 Watersheds, wildlife controls, sewer cleaning or inspections, addressing homeless encampments, increased inspections at high priority facilities and other activities targeted at identifying the most controllable sources of pollutants.***

Comment II.B.2-4: [Part II.B.2 of Revised Draft Permit] requires only evaluation of options, not the development, submission for DEC review and approval (with appropriate public participation opportunities), and implementation of a remedial plan, including a lawful compliance schedule, to reduce MS4 discharges sufficient to ensure compliance with water quality standards. It must be revised to require all of these things. [NRDC/Riverkeeper/NY-NJ Baykeeper on Revised Draft Permit]

***Response II.B.2-4: DEC disagrees with this characterization. The final permit requires the City to consider whether to incorporate measures to remediate POCs identified in CSO LTCPs as part of the SWMP approval process for Priority MS4 Waterbodies. The City must identify priority source categories contributing significant levels of POCs, provide a list of additional BMPs to remediate POCs from the priority source categories and provide a schedule to implement such BMPs within the shortest reasonable time. In addition, the City must describe opportunities for implementing feasible, cost-effective green infrastructure pilot projects and other structural retrofits. This strategy is consistent with approaches taken nationally in other impaired waters for which there is no established TMDL.***

Comment II.B.2-5: The Revised Draft Permit includes important provisions to ensure that the City's program to control discharges from its MS4 complements water quality improvement efforts in impaired waters with approved [CSO LTCPs]. These provisions respond to concerns raised by commenters that the prior version of the [Revised] Draft Permit did not adequately address the interaction between the SMWP and CSO LTCPs in addressing stormwater caused impairments to waterbodies. To that end, the Revised Draft Permit requires the City to consider whether to incorporate measures to remediate [POCs] identified in CSO LTCPs as part of the SWMP approval process for Priority MS4 Waterbodies: the City must identify priority source categories contributing significant levels of POCs; it must provide a list of additional [BMPs] to remediate POCs from the priority source categories and a schedule to implement such BMPs within the shortest reasonable time; and it must describe opportunities for implementing feasible, cost-effective green infrastructure pilot projects and other structural retrofits. The Revised Draft Permit also requires the City to include as part of its annual SWMP report information on the progress of the implementation of the aforementioned BMPs and opportunities for green infrastructure pilot projects and other structural retrofits. These provisions ensure that the SWMP will complement the CSO LTCPs in addressing POCs in impaired waters where there are no TMDLs for such POCs. The City believes these new permit provisions ensure that the SWMP will benefit from the work in the CSO LTCPs, and are responsive to requests by commenters. This strategy is consistent with approaches taken nationally in other impaired waters. For example, [EPA] Region 3, which oversees pollution control in the nation's largest estuary, the Chesapeake Bay, has emphasized that municipal stormwater management is an iterative process that involves continual monitoring, evaluation, and adjustment of practices. EPA Region 3's guidance documents on stormwater management have been made available for all interested stakeholders on the EPA website. Similarly, EPA Region 1 has taken an

iterative approach in its recent draft permit for small MS4s in Massachusetts, requiring municipalities that contribute to impairment of waters for which there is no established TMDL to develop and implement BMPs tailored to address pollutants causing impairment. [NYC Law on Revised Draft Permit]

***Response II.B.2-5: Comment noted.***

### **PART III – LEGAL AUTHORITY & STORMWATER PROGRAM ADMINISTRATION**

Comment III-1: We support the [Initial] Draft Permit provisions (Sections III.B., III.C., III.D, and IV (3<sup>rd</sup> para)) intended to ensure the Permittee has the requisite legal authority, financial resources, and inter-agency coordination protocols to implement its obligations under the permit, except that the various deadlines for submissions to DEC should be shortened to 2 years. [NRDC/Riverkeeper/NY-NJ Baykeeper on Initial Draft Permit]

***Response III-1: The Department believes that three years is an appropriate time frame for the development of the SWMP plan.***

Comment III-2: The timeline in the [Revised] Draft Permit for the SWMP and all other deadlines in the permit should be reduced to one year. (In our comments on the Initial Draft Permit, we urged a two-year deadline. However, one year has passed in the interim, and DEP has been well aware of what the bulk of its obligations under the permit's SWMP provisions are likely to be. DEP could and should have been – and we hope it has been – working over the last year to begin developing its SWMP. The protracted negotiations between DEC and DEP over the last year, which resulted in only modest changes to the draft permit, should not be allowed to delay the actual dates by which DEP must comply with the permit). [NRDC/Riverkeeper/NY-NJ Baykeeper on Revised Draft Permit]

***Response III-2: The Department believes that three years is an appropriate time frame for the development of the SWMP plan.***

### **PART III.B - REQUIREMENT TO DEVELOP ADEQUATE LEGAL AUTHORITY TO IMPLEMENT AND ENFORCE STORMWATER MANAGEMENT PROGRAM**

Comment III.B-1: On interagency coordination, effective stormwater management requires the [DEP] to coordinate with both planning and operating agencies:

- Planning agencies – the Department of City Planning, the Office of Long-Term Planning and Sustainability or its successor and the Office of Management & Budget, and

- Operating agencies - especially Buildings, Sanitation, Transportation, Parks and Police. [Bob Alpern on Initial Draft Permit]

Important tools for coordination at the borough and community board levels are the Borough [Service Cabinets] and District Service Cabinets. The Borough Service Cabinets include line-responsible officials of agencies serving the borough and are chaired by the Borough President (Charter Sec. 2706(b)). The District Service Cabinets include line-responsible officials of agencies serving a community district and are chaired by the Community Board's District Manager (Charter Sec. 2705). [Bob Alpern on Initial Draft Permit]

***Response III.B-1: DEC agrees that effective stormwater management will require coordination with many City planning and operating agencies to effectively implement the SWMP. As noted in the City's comment letter dated April 7, 2014, regarding the Initial Draft Permit, the City has already established an interagency task force to gather relevant information and plan for the substantial effort involved in permit implementation.***

### **PART III.C - ENFORCEMENT MEASURES & TRACKING**

Comment III.C-1: [In Part III.C.3 of the Initial Draft Permit], DEC has not defined "chronic violator" or the process for how the permittee will identify chronic violators. Please include a definition of "chronic violator" in Part VI.B. (Definitions) of the permit. [EPA on Initial Draft Permit]

***Response III.C-1: The Enforcement Response Plan is expected to detail how repeat and continuing violations will be identified and addressed to reduce chronic violations. The permit now includes a definition for "chronic violator" to mean a person or facility that has continuing or repeat violations of the applicable stormwater requirements.***

### **PART III.D - REQUIREMENT TO ENSURE ADEQUATE RESOURCES TO COMPLY WITH THE MS4 PERMIT**

Comment III.D-1: Please change the requirements contained in Part III.D.2 for a fiscal analysis be completed "within three years of EDP" to "each fiscal year" as is required in the federal regulations found at 40 C.F.R. 122.26(d)(2)(iv). [EPA on Initial Draft Permit & Revised Draft Permit]

***Response III.D-1: The federal regulations found at 40 CFR 122.26(d)(2)(iv) do not appear to specify a fiscal analysis be completed each year as long as it addresses each fiscal year to be covered by the permit. The City has***

***indicated that it would be more cost effective and equally protective to conduct one analysis per permit term that covers all years of the permit. Therefore, the final permit requires that a fiscal analysis cover all years of the permit term. Fiscal analysis for the next permit term will be required as part of a complete application for renewal that will be due 180 days prior to the expiration of the final permit.***

#### **PART IV- STORMWATER MANAGEMENT PROGRAM (SWMP) REQUIREMENTS**

Comment IV-1: Three years to develop a SWMP is excessive, particularly since this permit is now 20 years overdue and the City has likely been discussing the contents of the permit with DEC for years already. We further note that EPA's Phase I rule for large MS4 permits required submission of a proposed [SWMP] within two years of the date on which that rule was promulgated. The timeline in the [Initial] Draft Permit should be reduced to two years. [NRDC/Riverkeeper/NY-NJ Baykeeper on Initial Draft Permit]

*-and-*

The timeline in the [Revised] Draft Permit should be reduced to one year. (In our comments on the Initial Draft Permit, we urged a two-year deadline. However, one year has passed in the interim, and DEP has been well aware of what the bulk of its obligations under the permit's SWMP provisions are likely to be. DEP could and should have been – and we hope it has been – working over the last year to begin developing its SWMP. The protracted negotiations between DEC and DEP over the last year, which resulted in only modest changes to the draft permit, should not be allowed to delay the actual dates by which DEP must comply with the permit.) [NRDC/Riverkeeper/NY-NJ Baykeeper on Revised Draft Permit]

***Response IV-1: The Department believes that three years is an appropriate time frame for the development of the SWMP plan.***

Comment IV-2: The SWMP Plan should be required to address activities for a longer period of time than “the duration of the permit.” Under the deadlines in the Draft Permit, there would only be 2 years left of the permit term after the City submits the SWMP plan, to say nothing of additional time it will take for DEC to review and approve the plan after submission. Moreover, based on DEC's Environmental Benefits Permit Strategy, it seems likely that the permit will be “administratively renewed” beyond the end of its initial 5-year term. Thus, it is essential that the initial SWMP provide a roadmap for activities beyond the end of the permit's first term. [NRDC/Riverkeeper/NY-NJ Baykeeper on both Initial Draft Permit & Revised Draft Permit]

***Response IV-2: The final permit includes SWMP implementation deadlines that extend beyond the duration of the permit as suggested. Other than annual implementation and assessment of controls, the final permit also***

**requires updated MS4 drainage maps and outfall inventory every 5 years; updated self-assessment of municipal operations for pollution prevention every 5 years; updated inventory of industrial/commercial facilities that are possible sources every 5 years; inspections of SPDES MSGP Industrial Facilities annually, every 3 years, and every 5 years depending on the facility's potential for pollution; training of inspectors for SPDES MSGP Industrial Facilities every 2 years; and deadlines to conduct and conclude study to determine loading rate of floatable materials from the MS4 to waterbodies impaired for floatables.**

Comment IV-3: To ensure the plan remains relevant as circumstances change, the Draft Permit should require that, once every 3 years after approval of the SWMP, or upon submission of a permit renewal application (whichever is sooner), the Permittee's annual report shall include a thorough analysis of whether each major SWMP provision need to be updated and, if updates are needed, propose such updates.  
[NRDC/Riverkeeper/NY-NJ Baykeeper on Initial Draft Permit & Revised Draft Permit]

**Response IV-3: The SWMP must be kept current and is expected to be modified and updated as experience and progress dictates. It is expected that the program will be continually developed and refined as information is gained on the system and how it is used. On an annual basis, for each minimum control measure, the Permittee is required to evaluate the effectiveness of and make adjustments to the selected BMPs where they are found to be ineffective in controlling the discharge of pollutants to the MEP. In addition, Part IV.J requires an annual assessment of the overall program with adjustments made accordingly. The SWMP is expected to be up-to-date.**

Comment IV-4: The reference to "timelines for development" contained within the SWMP [p]lan is unclear. What would be "developed" after completion of the SWMP [p]lan? [NRDC/Riverkeeper/NY-NJ Baykeeper on Initial Draft Permit]

**Response IV-4: The SWMP is expected to be modified and updated in response to the annual assessment of the program. Where program elements are found to be ineffective or in need of improvement, there may be need for further development after completion of the initial plan. The final permit reads: The SWMP shall: 1) describe the BMP; 2) identify the time lines for implementation; 3) include measurable goals to assess progress over time; and, 4) describe how the Permittee will address POCs. The SWMP plan shall be kept current and revised as necessary to incorporate any new or modified BMPs timelines for implementation, or measurable goals.**

Comment IV-5: The requirement to make "steady progress toward implementation" is far too subjective. The SWMP should be required to have specific milestones with associated deadlines, and the Draft Permit should hold the Permittee accountable for

meeting all milestones and deadlines in the approved SWMP. [NRDC/Riverkeeper/NY-NJ Baykeeper on Initial Draft Permit & Revised Draft Permit]

***Response IV-5: The final permit contains specific milestones with associated deadlines as suggested.***

Comment IV-6: The last sentence before Part IV.A [of the Initial Draft Permit] states, “The SWMP plan shall describe priorities for implementing minimum control measures (MCMs) based on the following requirements.” The phrasing of this sentence makes it unclear whether the SWMP plan must actually meet the requirements of IV.A through IV.O or merely “describe priorities for implementing” those requirements subsequent to development of the SWMP plan. This language should be revised to make clear that the plan itself must include, in full, all of the SWMP elements defined in IV.A through IV.O. [NRDC/Riverkeeper/NY-NJ Baykeeper on Initial Draft Permit & Revised Draft Permit]

***Response IV-6: The final permit includes language to make clear that the plan itself must include all of the SWMP elements defined in IV.A through IV.J as suggested.***

Comment IV-7: Where a provision in Sections IV.A through IV.O requires the [P]ermittee to “develop,” “identify,” “select,” “describe,” or “conduct” some action, the permit should state unambiguously that these actions must be completed by the time the SWMP plan is due to DEC. The only sorts of actions described in IV.A through IV.O that should be taken after completion of the SWMP plan are those related to “implementing” or “enforcing” elements of the SWMP plan. [NRDC/Riverkeeper/NY-NJ Baykeeper on Initial Draft Permit & Revised Draft Permit]

***Response IV-7: The SWMP must be kept current and is expected to be modified and updated as experience and progress dictates. It is expected that the program will be continually developed as information is gained on the system and how it is used. On an annual basis, for each minimum control measure and on the overall program, the Permittee is required to evaluate the effectiveness and make adjustments where the selected BMPs are found to be ineffective in controlling the discharge of pollutants to the MEP. This may require the Permittee to develop, identify, and select new BMPs after completion of the SWMP plan.***

Comment IV-8: The language in the first paragraph of Section IV must be revised to state that the purpose of SWMP is to achieve compliance with the [MEP] standard and also water quality standards [NRDC/Riverkeeper/NY-NJ Baykeeper on Revised Draft Permit].

***Response IV-8: Attainment of water quality criteria is an incremental process consistent with Section 402(p)(3)(b) of the CWA so long as the Permittee reduces the discharge of pollutants to the MEP. The purpose of the SWMP is to achieve compliance with the MEP standard with the goal of***

***attainment of water quality standards. Water quality standards attainment in waters to which NYC MS4s discharge will require an iterative approach.***

## **PART IV.A - PUBLIC EDUCATION & OUTREACH**

Comment IV.A-1: The goal of public education should be changed behavior. While it is difficult to measure, behavior change is the only truly meaningful outcome. The more conventional and common goals, such as the number of posters distributed, number of students taught, do not necessarily tell us whether the water quality is improving [NYC SWCD on Initial Draft Permit]

***Response IV.A-1: DEC agrees that the goal of public education is to change behavior and eliminate pollutants at their source. The final permit requires the City select appropriate education and outreach activities and assess their effectiveness in reducing the pollutants in stormwater. The measurable goals (such as # posters distributed or # of students taught) are geared towards providing information on the activities the City intends to implement while the assessment of these activities would provide information as to whether the activities were successful in changing behavior or improving water quality.***

Comment IV.A-2: [With regard to Section IV.A.5 of the Initial Draft Permit], the educational and public information activities should not be limited to used-oil and toxic materials. Such activities should also include proper management and disposal of pet wastes, pharmaceuticals, household cleaners, and other substances of concern. [NYC SWCD on Initial Draft Permit]

***Response IV.A-2: The final permit clarifies that in addition to used-oil and toxic materials, the educational and public information activities must address the proper management and disposal of pharmaceuticals, household cleaners, pet waste, and other pollutants of concern as suggested.***

Comment IV.A-3: There are many organizations – community based organizations, environmental groups, educational institutions, etc. – that are engaged in public education on stormwater and water quality. The permit should require the DEP to develop a database of the educational organizations with relevant programs and include their program delivery as part of the annual report. DEP can develop materials, particularly for professional development, and assist these organizations in content development. However, for the education program to be effective, partnerships with those who are educating on the ground are the key. [NYC SWCD on Initial Draft Permit]

***Response IV.A-3: DEC agrees that community based organizations, environmental groups and other educational institutions that are engaged***



***in public education on stormwater and water quality would make valuable partners. The City is encouraged to develop partnerships with educational organizations as part of their education and outreach program. Part IV.B.2 of the final permit requires a public involvement/public participation program that identifies key individuals and groups who are interested in or affected by the SWMP.***

Comment IV.A-4: [EPA] Region 2 recommends adding a requirement in this section [Part IV.A.2] to mark/stencil all MS4 storm drains in order to inform the public that these outfalls drain directly to water bodies or possibly beaches of NYC. A requirement to periodically re-inspect and restore markings/ stenciling is also suggested. [EPA on Initial Draft Permit & Revised Draft Permit]

***Response IV.A-4: DEC agrees that stenciling is a valuable tool to inform the public and create public awareness on the impacts of stormwater runoff on local waters and expects this practice to be considered in the development of the public education & outreach program. However, there are approximately 148,000 storm drains citywide of which 35-40% are MS4 storm drains. Including a requirement that all storm drains must be marked/stenciled, may not be the best use of funds given the myriad of other requirements imposed by the final permit.***

## **PART IV.B - PUBLIC PARTICIPATION**

**Comment IV.B-1:** Several comments were submitted on the Initial Draft Permit requesting that the development of the SWMP plan by NYC and its approval by the Department include a public comment and public hearing process stating that the SWMP plan represents a permit application. Commenters also requested that all reports and notices resulting from the permit should be publicly noticed and available for comment at both public meetings and on the City's web site. [Jamaica Bay Ecowatchers][Friends of Brook Park][Bronx River Alliance][NY/NJ HEP][NYC Audobon][Swimmable NYC/Phil Jonat][Empire Dragon Boat NYC Team] [NRDC/Riverkeeper/NY-NJ Baykeeper][SWIM] [NYC SWCD][on Initial Draft Permit]

***Response IV.B-1: The Initial Draft Permit included provisions that would allow for meaningful participation by the public in the development of the SWMP plan. In response to comments, the Revised Draft Permit added requirements for NYC to provide further opportunity for public comment (by posting on their website and presenting at a public meeting) on the status reports on progress in development of the program during the first 3 years of coverage, as well as the opportunity for public comment on the annual reports generated after the SWMP is approved. NYC is required to provide the Department with the public comments received on the SWMP development and how the SWMP incorporates that input.***

**Comment IV.B-2:** Comments received on the Revised Draft Permit continued to press for the opportunity for comment to DEC and for a public hearing in connection with DEC's review and approval of the SWMP stating that the Revised Draft Permit does not contain all of the substantive requirements with which the Permittee must comply and likening DEC's approval of the SWMP to a SPDES permit modification. [NYCWTA][Friends of Brook Park][SWIM Coalition][NRDC/Riverkeeper/NY-NJ Baykeeper] on Revised Draft Permit.

***Response IV.B-2: The NYC MS4 Permit, not the SWMP, contains the effluent limits that are subject to the public participation requirements of the CWA. If during the course of review of the SWMP, the Department determines that the permit must be modified to incorporate new requirements (such a lower construction threshold) then the permit modification will be made available for comment as required by the public participation requirements of the CWA. Treating the SWMP as a permit application and the DEC approval of the SWMP as a permit modification would result in excessive delay in implementation.***

**Comment IV.B-3:** DEC's Small MS4 General Permit, which is currently under review by the New York [State] Court of Appeals in *NRDC v. DEC*, similarly lacks the necessary opportunities for public participation. We hereby incorporate by reference the appellants' briefs in that appeal insofar as they address the failure to provide the necessary opportunities for public participation in connection with DEC's review of a [P]ermittee's SWMP. A decision from the Court of Appeals is anticipated imminently. If the Court rules for the Appellants, it will be beyond dispute that the terms of the Revised Draft Permit are unlawful with respect to public participation and must be revised. We strongly urge DEC to wait for a ruling in *NRDC v. DEC* before finalizing the NYC MS4 Permit, and to revise the draft NYC MS4 Permit as needed to comply with the Court's holding, in order to avoid further litigation over the NYC MS4 [P]ermit that our organizations would be forced to bring if DEC issues a final NYC MS4 Permit that is unlawful under the forthcoming Court of Appeals decision. [NRDC/Riverkeeper/NY NJ Baykeeper on Revised Draft Permit]

***Response IV.B-3: The decision from the Court of Appeals on NRDC v DEC found that NRDC's challenges to the lawfulness of the MS4 GP with regard to public participation on SWMPs were without merit.***

**Comment IV.B-4:** For illicit discharge plans, construction site stormwater control, post-construction stormwater control, and industrial and commercial stormwater source management, the permit should require the City to develop a public-reporting system for complaints (accessible telephonically and electronically) that not only allows the members of the public to file complaints but also allows them to track their complaints through to resolution by the City, either online or through a point of contact in the City. Additionally, for construction site stormwater control (Permit, at IV.E), the [Initial] draft permit requires that the Permittee describe "procedures for receipt and follow up on complaints or other information submitted by the public regarding construction site

storm water runoff”; this section (IV.E.h) should be expanded to require a robust electronic and telephonic system for reporting complaints that allows any member of the public to track complaints from submission to resolution. [SWIM Coalition on Initial Draft Permit] [NRDC/Riverkeeper/NY-NJ Baykeeper on Revised Draft Permit] [Jamaica Bay Eco Watchers][Friends of Brook Park][Bronx River Alliance][NY/NJ HEP][NYC Audobon][Swimmable NYC/Phil Jonat][Empire Dragon Boat Team NYC] on Initial Draft Permit

***Response IV.B-4: The City has the 311 system that can be used by the public to report complaints electronically and by phone. The final permit includes requirements for handling complaints from the public. Part IV.A.4 requires the City to describe a program to promote, publicize, and facilitate public reporting of the presence of illicit discharges or water quality impacts associated with discharges from the MS4. Part IV.B.2.c requires the City to develop and implement a program that includes activities such as a water quality hotline where citizens can report spills, dumping, construction sites of concern, etc.***

**Comment IV.B-5:** In the long run, the City may consider reviving the Citizens Advisory Committee on Water Quality for continued public involvement, while greater availability of hard copies of official documents at repositories and by mail (for a reasonable fee, if necessary) would also improve public involvement. [NY-NJ HEP on Initial Draft Permit] On public participation, these are critical reforms...and not only for the MS4 Permit Process: standing advisory committees - Need for a long-term Citywide Citizens Advisory Committee working with long-term watershed/sewershed CACs. Learn from the experience of the 2008 and Long-Term Control Plan processes. [Bob Alpern on Initial Draft Permit]

A Citizens Advisory Committee run by the committee should be part of the Public Participation Plan; it is not appropriate for the agency to lecture the public. Please reconsider. [BCEQ on Revised Draft Permit]

***Response IV.B-5: DEC agrees that stakeholders such as those referenced provide valuable information and insight that would be helpful in the development and implementation of the SWMP. Part IV.B.2 of the final permit requires a public involvement/public participation program that identifies key individuals and groups who are interested in or affected by the SWMP. See Comment IV.B-8 for more information on the City’s plans for their public outreach and participation program.***

**Comment IV.B-6:** DEC should include a requirement that all submitted statements and comments be available, online, with other documentation the Permittee is required to share.[NRDC/Riverkeeper/NY-NJ Baykeeper on Revised Draft Permit]

Availability of permits, plans and reports – [there is a need] for more than on-line text of lengthy permits, plans and reports, draft and final: [it is recommended that] hard copies [of these documents be made available] at repositories or by mail (for a reasonable fee, if necessary). [Bob Alpern on Initial Draft Permit]

***Response IV.B-6: The final permit requires that the SWMP including but not limited to all comments received on the status reports and annual reports be made available to the public at reasonable times during regular business hours. The permit does not specify the location or means of providing this information to the public. While there is no legal requirement to make these records available electronically, the City is encouraged to do so.***

Comment IV.B-7: The [DEP] has already begun extensive public outreach efforts to affected parties. The City should be afforded the flexibility to establish an appropriate and robust public outreach effort rather than having such requirements mandated. [General Contractors Association of NY on Revised Draft Permit]

***Response IV.B-7: The final permit allows the Permittee flexibility as suggested.***

Comment IV.B-8: The City intends to build on the public outreach and participation successes and lessons learned from the many other DEP water quality public outreach and participation efforts. The flexibility to develop a meaningful, effective and iterative public participation process is essential to ensuring that this input ultimately benefits the public and the City. The City already plans to convene a steering committee modeled on the success of the Green Infrastructure Steering Committee; this steering committee will focus on, among other things, MS4 and SWMP development. However, the City believes the [Initial] Draft Permit takes the correct approach in affording the City the flexibility to design the most effective outreach program rather than mandating a specific outreach or coordination strategy.

To the extent that commenters on the [Initial] Draft Permit suggest that pursuant to 33 U.S.C. § 1342(a), DEC must solicit formal public comment through an additional public notice process before approving the final SWMP because the final SWMP is functionally equivalent to a permit, this suggestion lacks merit. As decided in *Natural Resources Defense Council, Inc. v. New York State Department of Environmental Conservation* the requirement of 33 U.S.C. § 1342(a) is satisfied by public comment and the opportunity for a hearing on the Draft Permit itself. 111 A.D.3d 737, 747 (2d Dep't 2013). While public participation in the development of the SWMP is important, and the City will encourage robust participation, formal public comment and the opportunity for a hearing before DEC is not legally required and should not be mandated in the permit. [NYC Law on Initial Draft Permit]

***Response IV.B-8: Comment Noted***

## PART IV.C - MAPPING

Comment IV.C-1:- A reform of the City's system of official maps (including Drainage Plans) is needed. [Bob Alpern on Initial Draft Permit]

***Response IV.C-1: The final permit requires improvements in MS4 mapping consistent with the regulatory requirements.***

Comment IV.C-2: The permit should require NYC to submit its current MS4 map within 6 months of the [EDP] in addition to the preliminary map specified in C.1, which is required in 3 years. [EPA on Initial Draft Permit & Final Draft Permit]

***Response IV.C-2: Under the "Duty to Provide Information" contained within Part V.F of the final permit, the City must furnish to the Department or authorized representative any information that is requested to determine compliance with the permit. The existing maps are available to DEC and EPA upon request. Therefore, a permit condition is not necessary.***

Comment IV.C-3: In Sections IV.C.1.a and d, mapping should not be limited to "known" outfalls and "known" SPDES-permitted discharges to the MS4. The Permittee should have an obligation to identify all such outfalls and discharges, whether known or unknown at the time of permit issuance. [NRDC/Riverkeeper/NY-NJ Baykeeper on Initial Draft Permit]

***Response IV.C-3: The final permit does not limit mapping to "known" outfalls and "known" SPDES-permitted discharges to the MS4 as suggested. The final permit also requires the City to provide a listing of all MS4 outfalls every year.***

Comment IV.C-4: The outfall inventory should be updated every year, not every five years. [EPA on Revised Draft Permit]

***Response IV.C-4: Part IV.D.2 of the final permit requires the Permittee to submit an updated outfall list every year as a spreadsheet that includes all MS4 outfalls as suggested.***

## **PART IV.D - ILLICIT DISCHARGE DETECTION & ELIMINATION (IDDE)**

Comment IV.D-1: [DEC] should add language to Part IV.D [of the Initial Draft Permit]for requiring public reporting of illicit discharges and indicate what information should be included as part of a public reporting program.[EPA on Initial Draft Permit]

***Response IV.D-1: The final permit includes this requirement under Parts IV.A.4 and IV.B.2.c.***

Comment IV.D-2: [DEC] should include training requirements specifically for public employees assigned to [IDDE] operations. [EPA on Initial Draft Permit]

***Response IV.D-2: The final permit includes a training requirement for IDDE operations staff (See Part IV.D.11) as suggested.***

Comment IV.D-3: Page 15 – Part IV.D.1: Please change “The program shall also address the categories of non-storm water...” to “The program shall also address the categories of *exempt* non-storm water...” to maintain consistency with Part I.B. [EPA on Initial Draft Permit]

***Response IV.D-3: The final permit (Part I.B) references “Non-Stormwater Discharges” (rather than “Exempt Non-Stormwater Discharges” as referenced in the Initial Draft Permit). The final permit provides that the listed non-stormwater discharges are authorized under the permit unless the Permittee or the Department determines them to be significant contributors of pollutants to the MS4, in which case they are illicit discharges that must be eliminated. Non-stormwater discharges or flows listed in Part I.B that are determined to be a significant contributor to pollutants of the State must be addressed by the IDDE program as they are not authorized by this permit. To maintain consistency with Part I.B, Part IV.D.1 now reads, “The program shall also address the categories of allowable non-storm water discharges or flows listed in Part I.B where such discharges to the MS4 are identified by the Permittee as a significant contributor of pollutants to surface waters of the State.”***

Comment IV.D-4: “Water Pollution Control Plants” should be substituted for “wastewater treatment plants” to be consistent with terminology used in DEP's other SPDES permits. Alternatively, a definition could be added for “wastewater treatment plants” to explain that it refers to NYC's “Water Pollution Control Plants.” [EPA on Initial Draft Permit]

***Response IV.D-4: The final permit uses the term “wastewater treatment plant” to be consistent with the draft renewals of the SPDES permits for the***

**following facilities: Hunts Point (NY 002 6191); Bowery Bay (NY002 6158); Jamaica (NY 002 6115); Tallman Island (NY 0026239); Port Richmond (NY 002 6107); Newtown Creek (NY 002 6204); Coney Island (NY 002 6182); Owls Head (NY 002 6166; Rockaway (NY 002 6221); and, Oakwood Beach (NY 002 6174). In the event that these other SPDES permit renewals are not issued together with the NYC MS4 Permit, a footnote has been added to specifically reference the SPDES permit identification numbers for the “New York City Department of Environmental Protection’s (NYCDEP) waste water treatment plants” that contain the Shoreline Survey and Outfall Identification requirements.**

Comment IV.D-5: [EPA] Region 2 recommends that as part of NYCDEP's outfall reconnaissance inventory (ORI) activities, NYC shall identify and maintain a database of all outfalls not owned by NYC that are discharging non-exempt non-stormwater, which would be available to [DEC] and EPA Region 2 on an annual basis to help identify illicit discharges that should be abated by the non-NYC entities that have control over them. [EPA on Initial Draft Permit]

**Response IV.D-5: The NYC MS4 Permit requires city-wide activities specified in the shoreline survey and outfall identification requirements contained in the SPDES permits for the DEP wastewater treatment plants be continued. In the Shoreline Survey program, the DEP identifies all outfalls found during the survey and will categorize them by the size, type, shape, condition and ownership (city-owned or not). The NYC MS4 Permit also requires submission of an updated list of outfalls every year. In the course of their survey, if the City identifies non-stormwater discharges from outfalls not owned by NYC, they refer those discharges to DEC for follow-up and DEC keeps records of these activities. Since the NYC MS4 Permit is authorizing stormwater discharges from NYC owned and operated separate sewer systems, requiring the City to maintain a database of outfalls it does not own that are discharging non-stormwater directly to surface waters is outside of the scope of this permit.**

Comment IV.D-6: Page 15 – Part IV.D.4: Waterbodies that are shown through sampling activities required in IV.D.4 to have fecal coliform levels over 200 colonies/100ml should be prioritized for ORIs as per the “Sentinel Monitoring Program” required under [DEP's] Water Pollution Control Plants' individual SPDES permits. [EPA on Initial Draft Permit]

**Response IV.D-6: The final permit (see Part IV.D.5) requires waterbodies that are shown through sampling activities required in IV.D.4 to have fecal coliform levels over 200 colonies/100 ml, to be prioritized for a mini-shoreline investigation as per the procedure outlined in the Sentinel Monitoring Program.**

Comment IV.D-7: The permit should require [DEP] to prepare a report of the locations and ownership of illicit discharges to the MS4 (whether NYC owned or not) where the

MS4 discharges to waterbodies are shown to have over 200 colonies/100 ml of fecal coliform through its Sentinel Monitoring Program. This report should be submitted to [DEC] and available to EPA within two years of EDP. Also, outfalls identified as discharging non-exempt non-stormwater that are not owned by NYC should be reported in the straight pipe discharge database described above and those non-exempt non-stormwater discharges to NYC's MS4 or CSO outfalls downstream of the regulator should be included in a separate report. [EPA on Initial Draft Permit]

***Response IV.D-7: The final permit (see Part IV.D.5) requires reporting on the locations and sources of illicit discharges to the MS4 where the MS4 discharges to waterbodies are shown to have over 200 colonies/100 ml of fecal coliform. Part IV.M.4.d of the final permit requires reporting on non-stormwater discharges from NYC's MS4 or CSO outfalls downstream of the regulator. Since the NYC MS4 Permit is authorizing stormwater discharges from NYC owned and operated separate sewer systems, requiring the City to sample and report on outfalls not covered by the permit is beyond the scope of this permit.***

Comment IV.D-8: [DEC] should add ammonia as an indicator parameter along with surfactants, fecal coliform, etc. as listed in Part IV.D.4. [EPA on Initial Draft Permit]

***Response IV.D-8: The final permit includes ammonia as an indicator parameter as suggested.***

Comment IV.D-9: EPA believes that [paragraph IV.D.5 of the Revised Draft Permit] may exempt NYC from illicit discharge elimination requirements (paragraph IV.D.4) in areas where its MS4 discharges to a waterbody with over 200 colonies/100ml fecal coliform. MS4 permits must require permittees to develop, implement and enforce an [IDDE] program throughout their entire MS4. Please explain. [EPA on Revised Draft Permit]

***Response IV.D-9: This section of the permit does not exempt the City from IDDE requirements but rather is meant to prioritize efforts in detection, trackdown and elimination.***

Comment IV.D-10: [With regard to Paragraph IV.D.5 of the Revised Draft Permit], EPA recommends changing the phrase "...including the Shoreline Survey and Sentinel Monitoring Programs, to satisfy this requirement." to "...including the Shoreline Survey, a modified Sentinel Monitoring Program, and abatement procedures specified in Part 2 of the Untreated Discharges Section (e.g. Part XIII of the Coney Island WPCP Permit) to satisfy this requirement." [EPA on Revised Draft Permit].

***Response IV.D-10: The final permit (Part IV.D.4) has been clarified to describe the monitoring and abatement procedures. The Permittee may utilize existing programs required by the SPDES permits for DEP's wastewater treatment plants, including the Shoreline Survey, Dry Weather***



***Discharge, and Sentinel Monitoring Programs to satisfy the IDDE requirement. To the extent such programs do not satisfy the requirements of the final permit, the Permittee must include appropriate modifications or additions in the SWMP plan. Within 30 days of the discovery of an illicit discharge in MS4 areas, the Permittee shall provide the Department with a schedule in writing (Phase I Schedule) for conducting the necessary investigative work to determine the source of the discharge and for proposing an abatement program. On or before the end of the schedule in Phase I, the Permittee shall submit to the Department in writing an abatement program, with milestone dates (Phase II Schedule), to abate the illicit discharge. Unless the Department disapproves of the Phase I or II schedule in writing within 15 days of receipt of the schedules, or unless the Department informs the Permittee in writing that it will require a specified additional period of time to complete its review, the schedules shall be deemed approved by the Department.***

Comment IV.D-11: The correspondence over the last seven months between DEC and DEP concerning the Westchester Creek and Hutchinson River draft [CSO] LTCPs includes extensive discussion of sampling and/or modeling concerning illicit discharges from NYC's MS4 system. DEC should refine the [IDDE] requirements in the NYC MS4 permit as needed to address illicit discharge issues identified in the draft [CSO] LTCPs and in the correspondence between DEC and DEP on the draft [CSO] LTCPs, as well as any other new information that has been generated within the last year about illicit discharges in NYC. [NRDC/Riverkeeper/NY-NJ Baykeeper on Revised Draft Permit]

***Response IV.D-11: Where the CSO LTCP identifies illicit discharge to be an issue within the MS4 sewershed, the Permittee is required to take action to track down and eliminate the source. The enhanced BMPs required by Part II.B.2 where CSO LTCPs indicate high potential for illicit discharge would likely include a more aggressive program for seeking out illicit discharges (enhanced screening methods, more dry weather discharges, hotlines, desk top analysis of potential sources (homeless encampments, areas of older septic systems, leaking sewers etc..)).***

Comment IV.D-12: Throughout the Revised Draft Permit, references to water quality indicators, including for example references in the IDDE sections to fecal coliforms, should be amended to reflect the best science available that has been incorporated into [CWA] standards – the EPA's 2012 Water Quality Criteria. [NRDC/Riverkeeper/NY-NJ Baykeeper on Revised Draft Permit]

***Response IV.D-12: The final permit includes water quality indicators consistent with the current water quality standards which are expressed as Fecal Coliform. Any permit renewal or modification will reflect the specific water quality indicator with respect to the water quality standard in effect at the time of issuance.***

## **PART IV.E- CONSTRUCTION SITE STORMWATER RUNOFF CONTROL**

Comment IV.E-1: Numerous comments<sup>5</sup> were submitted on the Initial Draft Permit stating that the one acre threshold for construction site oversight excludes far too much of the MS4 service area from coverage noting that the majority of construction projects within the City are small and suggesting that a threshold of 5,000 sf would be more appropriate for NYC. In response to these comments, the Initial Draft Permit was revised to require NYC develop adequate authority to require installation, implementation and maintenance of control measures including those to control runoff, construction materials and debris and erosion during any construction or demolition activities in discharges to the MS4. No comments were received with regard to the substance of this change. Comments received on the Revised Draft Permit continue to urge DEC to reduce the one acre threshold to 5,000 sf.

***Response IV.E-1: Comments received regarding the Construction Site Threshold are addressed with other comments received on the Post Construction Requirements (Part IV.F)***

Comment IV.E-2: [EPA] Region 2 recommends that [DEC] add “or subsequent SPDES Construction General Permits (CGP) as applicable” to ensure that NYC is consistent with a current CGP. [EPA on Initial Draft Permit and Revised Draft Permit]

***Response IV.E-2: The NYC MS4 Permit references the most current version of the CGP, GP-0-15-002, which became effective on January 29, 2015. The final permit does not incorporate future requirements to allow for due process and provide the opportunity to comment on the substance of the requirement.***

Comment IV.E-3: [EPA] Region 2 recommends expanding SWPPP review to include those projects that disturb less than an acre but are part of a common plan of development, such as the language found at Part IV.F.1.b of this draft permit. [EPA on Initial Draft Permit]

***Response IV.E-3: The introductory paragraphs for Part IV.E and IV.F state that these parts apply to runoff to the MS4 from construction activities that result in land disturbance less than one acre if the construction activity is part of a larger common plan of development or sale. However, Part IV.E.1.g.ii and Part IV.F.1.b of the final permit have been clarified to ensure all SWPPPs are reviewed for sites that are part of a larger common plan of development or sale as suggested.***

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<sup>5</sup> [Bronx River Alliance][Empire Dragon Boat][Friends of Brook Park][Jamaica Bay][Michele Lewis][NYC Audobon][NY-NJ HEP][Philip Jonat][SWIM][NYC SWCD][NRDC/Riverkeeper/NY-NJ Baykeeper][EPA] on Initial Draft Permit

Comment IV.E-4: Please include language that allows for updates to the SWPPP acceptance forms in subsequent [DEC CGPs]. [EPA on Initial Draft Permit & Revised Draft Permit]

***Response IV.E-4: The final permit requires that after review of SWPPPs, the Permittee will use the “MS4 SWPPP Acceptance Form” or most current version, created by the Department and required by the CGP (GP-0-15-002) to notify the applicant that reviewed plans have been accepted by the Permittee.***

Comment IV.E-5: Part IV.E.1.i of the Revised Draft Permit requires the SWMP to describe procedures for inspections of construction sites to ensure that the measures identified in the approved SWPPPs are in place and performing properly. As is common in other City-inspection regimes and in other jurisdictions’ administration of construction stormwater requirements as part of their MS4 programs, the City understands that third party inspectors may be used to fulfill this requirement, and believes the permit allows the use of such third party inspectors. [NYC Law on Revised Draft Permit]

***Response IV.E-5: The final permit allows for the use of third party inspectors provided that they are adequately trained and understand the State and local sediment and erosion control requirements. If the City elects to rely on third parties to implement any portion of the SWMP, they must provide adequate assurance that the third party will comply with permit requirements applicable to the work they will perform.***

Comment IV.E-6: The design responsibility for the [SWPPP] must be the responsibility of the project owner and must be included as part of the project plans and specifications in the contract bid documents. The SWPPP erosion and sediment control practices will have an impact on project cost and therefore must be clearly set forth in the bidding process to ensure a full and fair bidding process and compliance with the SWPPP requirements. [General Contractors Association of NY on Revised Draft Permit]

***Response IV.E-6: The design responsibility for SWPPPs will continue to be the responsibility of the project owner. The requirements of the final permit requires the Permittee to conduct SWPPP review and compliance oversight for construction activities.***

## PART IV.F - POST CONSTRUCTION STORMWATER MANAGEMENT

Comment IV.F-1: Numerous comments were submitted on the Initial Draft Permit stating that the one acre threshold for application of post-construction stormwater management requirements (Section IV.F) excludes far too much of the MS4 service area from coverage. Commenters suggested this size threshold would not satisfy the MEP standard stating that broader application of these requirements, to all new development and redevelopment with at least 5,000 sf of land disturbance, is indeed practicable, and is therefore mandatory. Other commenters urged DEC to evaluate data on construction projects and patterns closely to determine the best size, in line with best practices in other US cities and metropolitan areas noting that a more appropriate size threshold will ensure that green infrastructure practices become widespread through the City, not only at a small number of large development sites in select areas of the City.<sup>6</sup>

***Response IV.F-1: The federal regulations requiring NPDES coverage for small construction sites [40 CFR 122.26(b)(15)] is the basis of the 1 acre threshold contained in the Initial Draft Permit. In accordance with the federal register that accompanied the final rule establishing the 1 acre threshold, deviation from the default standard for construction activities when supported by location-specific water quality information showing that the default 1 acre standard is too limited to protect water quality is permissible. Sufficient information was submitted to suggest that the 1 acre standard may be too limited to protect water quality in waters surrounding NYC. Therefore, in response to comments, the Revised Draft Permit added Part IV.F.4 that requires the City conduct a study to determine the appropriate reduction in lot size threshold for triggering the applicability of construction and post construction stormwater management requirements at new development and redevelopment sites. Upon review of the information, the Department will make a determination as to what is practicable for inclusion into the permit. This approach is consistent with that taken by DEC prior to reducing the threshold for construction activities within the East of Hudson Watershed.***

Comment IV.F-2: Comments received on the Revised Draft Permit continue to urge DEC to reduce the one acre threshold to 5,000 sf based on currently available studies and data from other metropolitan areas in the country. Commenters point to other cities such as Washington DC and San Francisco MS4 permits as examples of large densely populated cities that use this threshold stating that standards that have proven to be practicable in other major cities must be practicable in NYC. Commenters also reference an analysis of NYC lot-level data that demonstrates a one-acre threshold would cover only a small minority of the land area within the City's MS4 system, whereas a 5,000 sf threshold would capture a significantly larger percentage of the City's land area as sufficient information to reduce the threshold to 5,000 sf without

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<sup>6</sup> [Bronx River Alliance][Empire Dragon Boat][Friends of Brook Park][Jamaica Bay][Michele Lewis][NYC Audobon][NY-NJ HEP][Philip Jonat][SWIM][NYC SWCD][NRDC/Riverkeeper/NY-NJ Baykeeper][EPA]

further study. [SWIM][Friends of Brook Park] [NYCWTA] [NRDC/Riverkeeper/NY-NJ Baykeeper] on Revised Draft Permit

***Response IV.F-2: The analysis of NYC lot-level data provided with comments on the Initial Draft Permit, was sufficient to show that a 5,000 square foot threshold would capture a significantly larger percentage of the City's land area than a 1 acre threshold. However this information alone is not sufficient to establish new regulatory requirements that will impact entities other than the Permittee. Additional information is needed to fully understand the cost and corresponding benefit to water quality associated with various thresholds and land use conversions. As the effluent limit will impact entities other than the Permittee, stakeholder involvement and input is essential to fully understand the impacts of setting a lower threshold. In conducting the required study, the City will seek input from a wide variety of interested parties, and will review the approaches used in other communities to identify feasible and appropriate practices as part of its recommendations.***

Comment IV.F-3: Several commenters suggested that if a study is needed, the permit should provide more detail as to what will be included in the Lot Size Threshold Study for Construction and Post-Construction, the criteria DEC will use to make its determination of the appropriate lot size threshold and whether DEC will determine what performance standards will apply once the appropriate threshold is identified. [EPA on Revised Draft Permit][NRDC/Riverkeeper/NY-NJ Baykeeper on Revised Draft Permit]

***Response IV.F-3: The study will provide additional information as to the distribution of projects with regard to cumulative area, land use change, pollutant capture/reduction potential and cost to implement. The study will also consider redevelopment and the benefits for adopting more stringent controls for redevelopment than are required by the CGP. The final permit contains the information that the study needs to address.***

Comment IV.F-4: Commenters suggest that if DEC chooses not to require 5,000 sf as the threshold for post-construction requirements, DEC should require that NYC take any actions necessary to implement the threshold selected as a result of the Lot Size Threshold Study upon completion of the study [EPA on Revised Draft Permit][NRDC/Riverkeeper/NY-NJ Baykeeper on Revised Draft Permit]

***Response IV.F-4: The study will be submitted along with the SWMP. Once the Department finds that an appropriate threshold has been determined, it will be incorporated into the permit as part of a permit modification or renewal that will include a compliance schedule detailing the actions necessary to implement the threshold in the shortest reasonable time. During the interim period, the City will begin implementing the construction program for projects greater than or equal to one acre and projects less***

***than one acre if they are part of a larger common plan of development or sale.***

Comment IV.F-5: Several commenters suggest that DEC's process for review and approval of the study must include an opportunity for the public to comment on, and a public hearing before, DEC as to whether the City's proposed size threshold satisfies applicable legal standards. [NRDC/Riverkeeper/NY-NJ Baykeeper on Revised Draft Permit]

***Response IV.F-5: Once an appropriate threshold has been determined, it will be incorporated into the permit as part of a permit modification or renewal that will include a compliance schedule detailing the actions necessary to implement the threshold in the shortest reasonable time. DEC will make the permit modification or renewal available for public comment and hearing as required by the public participation requirements of the CWA.***

Comment IV.F-6: We are concerned that the new requirements in the [NYC] MS4 Permit will further increase project costs, require additional [NYC] resources and result in much higher water rates, or a reduction in other essential capital construction improvements to the city's water and sewer mains. The construction industry opposes efforts to reduce the size threshold for construction and post construction storm water controls below one acre. Such a reduction would dramatically increase the number of lots to which these rules apply without a corresponding benefit to water quality improvements. Moreover, a reduction in the size threshold – especially without detailed knowledge of the construction and post construction controls – would impact economic development in [NYC] and increase construction costs. The increased engineering, monitoring and construction costs will have a harmful impact on the ability to fund the construction of affordable housing, which is a critical need in the New York metropolitan area. [Association of General Contractors on Revised Draft Permit]

***Response IV.F-6: The construction threshold study will include outreach to interested stakeholders and provide information on the cost and water quality benefits corresponding to different construction thresholds and land use changes such that an informed decision can be made as to the appropriate threshold. In addition to the public participation opportunities that will be provided as part of the study, interested stakeholders will also have the opportunity to comment and hearing on the proposed threshold as part of the permit modification/renewal process.***

Comment IV.F-7: As set forth in the City's comments [on the Initial Draft Permit], dated April 7, 2014<sup>7</sup>, there are several reasons why the final MS4 permit issued to the City should retain the one acre threshold at this time rather than reducing the size threshold that triggers provisions for construction and post-construction stormwater controls. To

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<sup>7</sup> NYC Law Department – Environmental Law Division, comment letter to DEC on Initial Draft Permit, 7 Apr. 2014, Paragraph C(d) pp 5-7.

accommodate the concerns of several commenters who sought a reduced size threshold, the Revised Draft Permit includes a new requirement to conduct a study to determine the appropriate reduction in lot size threshold, taking into consideration local site conditions, compliance costs, and other factors. This provision appropriately recognizes the need to ensure that any changes to the construction and post-construction requirements are supported by evidence and careful study, and are informed by outreach to interested stakeholders. In conducting the required study, the City will seek input from a wide variety of interested parties, and will review the approaches used in other communities to identify feasible and appropriate practices as part of its recommendations. This approach will also allow the City to coordinate with DEC following the completion of the study to consider and propose any necessary changes to DEC's [CGP] so that requirements are consistent citywide. [NYC Law Department on Revised Draft Permit]

***Response IV.F-7: Comment noted.***

Comment IV.F-8: GREEN INFRASTRUCTURE COMPONENT - We agree with the DEC's approach in not being prescriptive with the permit and allowing the City to develop how it manages the stormwater. Nonetheless, we would like to see more explicit encouragement and perhaps incentives for the use of green infrastructure beyond referencing the [NYSSMDM]. With the new Mayor and the new Commissioner, we are not clear on the level of their commitment to green infrastructure. While we are confident that the City's green infrastructure programs will move forward, we would like to ensure that the City will actually expand and enhance the programs. A stronger language on green infrastructure will help send the message that the State is firmly behind the City's commitment to green infrastructure. [NYC SWCD on Initial Draft Permit][Friends of Brook Part on Revised Draft Permit]

***Response IV.F-8: The State is firmly committed to the green infrastructure approach to controlling stormwater. Green infrastructure techniques are included in the NYSSMDM which is referenced in the CGP, GP-0-15-002. The Multi Sector General Permit encourages the implementation of green infrastructure techniques as BMPs in industrial facilities. There are multiple provisions within the final permit that will help to expand and enhance the City's commitment to green infrastructure. Part IV.G.2 of the final permit requires the City consider and incorporate, where feasible, cost effective green infrastructure practices such as bioswales and green streets, into planned municipal upgrades including municipal rights of way. Part II.B.2 requires a description of opportunities for implementing green infrastructure pilot projects and other structural retrofits where cost effective and feasible in Priority MS4 Waterbodies.***

Comment IV.F-9: The Initial Draft Permit should be modified to expressly incorporate the performance standards of the [NYSSMDM]. DEC should also add a provision to Section IV.F.1.d requiring the City to ensure that all SWPPPs subject to post-construction requirements comply with the [NYSSMDM]'s numeric performance

standards. (These performance standards -- e.g., RRv, WQv, CPv – are found at p. 4-1 of the [NYSSMDM] (available at <http://www.dec.ny.gov/chemical/29072.html>).) [NRDC/Riverkeeper/NY-NJ Baykeeper on Initial Draft Permit]

***Response IV.F-9: The NYC MS4 permit references the most current version of the CGP, GP-0-15-002, that became effective on January 29, 2015. GP-0-15-002 incorporates the numeric standards (i.e. sizing criteria) of the NYSSMDM as suggested. The final permit also includes additional language (see Part IV.F.1.d.iv) to ensure that all SWPPPs that are subject to post-construction stormwater management requirements comply with the numeric standards (i.e. sizing criteria) contained in the NYSSMDM.***

Comment IV.F-10: The Revised Draft Permit (section IV.F.1) now incorporates-by reference the standards from the new [CGP], GP-0-15-002 (as suggested by Comment IV.F-9 above). However, this creates new problems, since the post-construction performance standards in that permit fail to meet the [MEP] standard. The standard for redevelopment projects is far weaker than the standard for new development projects in the 2015 CGP when applied to [NYC], where virtually every construction project is a redevelopment project. The City's own stormwater rules adopted in 2012, which apply in combined sewer drainage areas, do not apply a lower standard to redevelopment as compared to new development. While the standards in the Revised Draft Permit differ in substance from those standards, as they should – because they require runoff reduction, rather than slow release – there is likewise no basis to apply a more lenient standard to redevelopment than to new development in the MS4 areas of the city. Other similar jurisdictions apply the same stringent runoff reduction standards to both new development and redevelopment, demonstrating that it is practicable, and therefore required for the NYC MS4 permit under the [MEP] standard. Moreover, as also explained in our comments on the draft [CGP], in any instances where there are technical constraints on a particular redevelopment site that makes it infeasible to capture runoff from the 90th percentile storm without discharge, the infeasibility exception built-in to the runoff reduction standard for new development standard makes it fully practicable apply that same standard to redevelopment sites. [NRDC/Rivekeeper/NY-NJ Baykeeper on Revised Draft Permit] Because most construction in [NYC] is “redevelopment” of already developed sites, it is essential to have a strong stormwater management standard for redevelopment projects, not just for new development. Again, in line with best practices elsewhere, the permit should hold new development and redevelopment projects to the same protective standards, requiring the on-site capture of the 90th percentile storm (1.5 inches of rainfall in [NYC] using green infrastructure techniques. [SWIM Coalition on Revised Draft Permit][Friends of Brook Park on Revised Draft Permit]

***Response IV.F-10: The study on the appropriate construction threshold required in Part IV.F.4 of the final permit must consider redevelopment and the cost versus benefit for adopting a stronger standard as suggested. Also, in impaired watersheds, a stronger redevelopment standard would be***



***a “non-structural bmp” that may be considered as part of the enhanced requirements.***

Comment IV.F-11: All references to the [CGP] and to the [NYSSMDM] should be to the “then-current” version of these documents, rather than the 2010 version specifically, since both documents are likely to be modified over the lifetime of this permit. [NRDC/Riverkeeper/NY-NJ Baykeeper on both Initial and Revised Draft Permits]

***Response IV.F-11: The NYC MS4 Permit references the most current versions of the CGP and NYSSMDM that became effective on January 29 2015. The final permit does not incorporate future requirements to allow for due process and provide the opportunity to comment on the substance of the requirement.***

Comment IV.F-12: The Permittee should be required to determine whether the technical designs (as distinct from the performance standards and “sizing criteria”) in the [NYSSMDM] are generally appropriate for the range of site conditions encountered in [NYC] and, if they are not, to develop a City-specific design manual, which identifies alternative technical designs that may be used to meet the performance standards and sizing criteria of the [NYSSMDM]. Any such City-specific design manual must be included as part of the Permittee’s SWMP and subject to all public participation and DEC approval requirements to which the SWMP is subject. [NRDC/Riverkeeper/NY-NJ Baykeeper on Initial Draft Permit & Revised Draft Permit]

***Response IV.F-12: The NYSSMDM includes green infrastructure practices that are suitable for ultra-urban environments. However, as new and innovative treatment technology emerges, the permit does not preclude the use practices found to be better suited to the site conditions encountered in NYC provided that they are demonstrated to be equivalent (provides equal or better performance, longevity, safety and maintenance protections) to the NYSSMDM. DEC will consider adding new technologies to the NYSSMDM as they evolve. The final permit does not mandate the City to come up with their own standards. However, as part of the development and annual assessment of the post construction stormwater management component of the SWMP, the Permittee will make a determination whether the technical designs in the NYSSMDM are appropriate for the range of site conditions in NYC, and if they are found to be lacking, the Permittee could petition the Department to incorporate into the NYSSMDM or request that City-specific design guidelines be incorporated into the permit.***

Comment IV.F-13: The accompanying fact sheet to the [Initial] Draft Permit states, “Develop and maintain an inventory of post construction stormwater management practices within their jurisdiction,” but it is not clear where in the permit this is required. Please explain where the requirement is or modify the permit as needed. [EPA on Initial Draft Permit]

***Response IV.F-13: Part IV.F.1.e states that the Permittee is to establish and maintain the inventory of post construction stormwater management practices within three years of EDP. This is also listed as a deliverable in Table 2 of Part IV.O.***

Comment IV.F-14: In Section IV.F.1.c.i of the Initial Draft Permit, the requirement to adopt an ordinance equivalent to the 2006 version of DEC's Sample Local Law is inadequate. The [Initial] Draft Permit (section IV.F.1.a) requires protections equivalent to the requirements of the 2010 General Permit for Stormwater Discharges for Construction Activities, but the 2006 Sample Local Law falls short of those requirements in many respects. NRDC has previously provided DEC with a detailed memo identifying these discrepancies and explaining how DEC could modify the Sample Local Law to resolve them; we attach that memo here as Exhibit 3. DEC should update the Sample Local Law to conform to the requirements of the [CGP], as modified further to reflect more stringent requirements of the final NYC MS4 permit (e.g., the 5,000 sf size threshold discussed in comment #1.a above), and should modify the [Initial] Draft Permit to require adoption of an ordinance equivalent to such modified version of the Sample Local Law. [NRDC/Riverkeeper/ NY-NJ Baykeeper on Initial Draft Permit]

***Response IV.F-14: The final permit does not make reference to the Sample Local Law and clarifies that the Permittee must include a certification by the NYC Corporation Counsel or his designee that the Permittee has established the necessary legal authority to implement all requirements contained in Part IV.F and IV.E. The City has been provided with the referenced memo to assist in making the certification.***

Comment IV.F-15: Section IV.F.1.d.iv requires the City to: "Develop, implement, and enforce a program that: . . . describes procedures for . . . reviews [of covered development projects] . . .[which] shall require that: . . .if a stormwater management practice is designed and installed in accordance with the [NYSSMDM] (2010) or has been demonstrated to be equivalent and is properly operated and maintained, then [the CWA's] "maximum extent practicable" standard] will be assumed to be met." The [Initial] draft permit does not explain what is meant by "equivalent." [NRDC/Riverkeeper/NY-NJ Baykeeper on Initial Draft Permit]

***Response IV.F-15: The final permit includes, as a footnote, a definition of what is meant by "equivalent" in this context.***

Comment IV.F-16: Part IV.F.1.d of the Revised Draft Permit includes a new provision, not included in the Initial Draft Permit that the City must "ensure that SWPPPs for proposed flood management projects assess the impacts on the water quality of receiving waters." This provision includes no definition of "flood management project," no explanation of the method the City must use to evaluate such impacts, and no requirement to avoid, mitigate, or offset such impacts.[NRDC/Riverkeeper/NY-NJ Baykeeper on Revised Draft Permit]

**Response IV.F-16: The final permit defines flood management projects as follows:**

***“Flood management projects refers exclusively to projects designed and functioning to capture, detain, or convey overland flow from a large drainage area to prevent downstream flooding associated with a 100-year or greater storm event. This excludes projects, such as installation and maintenance of storm sewers, high level storm sewers, Bluebelt storm sewers, and drainage inlets and other project to improve drainage, alleviate localized flooding, or reduce coastal flooding.”***

***The federal regulations at 40 CFR 122.26(d)(2)(iv)(A)(4) require a description of procedures to assure that flood management projects assess the impacts on water quality of receiving waters but does not define flood management projects. Part IV.F.1.d.vi of the Revised Draft Permit was added to the permit to address this regulatory requirement for new projects. Part IV.F.1.d.vi requires the SWMP include procedures for SWPPP review that incorporate controls for expected water quality improvements and review of individual pre-construction SWPPPs to ensure consistency with State and local post-construction stormwater requirements. These procedures will describe how SWPPPs of proposed flood management projects will be reviewed to evaluate the impacts on the water quality of receiving waters and how such impacts will be controlled.***

Comment IV.F-17: The provision contained in Part IV.F.1.d.vi of the Revised Draft Permit specifically excludes “the installation and maintenance of storm sewers, high level storm sewers, Bluebelt projects, or other projects that reduce localized flooding; recreational and aesthetic features and impoundments that do not perform a flood control function; and drainage inlets.” This exclusion is completely improper and unlawful. Most such drainage improvements, almost by definition, are likely to increase pollutant loads because they are designed to capture more runoff in the MS4 system and discharge it through MS4 outfalls to city waterways, irrespective of any changes in the land use or increases in impervious area. The [Revised Draft] permit must require DEC to avoid, mitigate, or offset such increase pollutant loads by retrofitting the area draining to the new or expanded sewer lines and/or outfalls.[NRDC/Riverkeeper/NY-NJ Baykeeper on Revised Draft Permit]

***Response IV.F-17: DEC disagrees with the characterization that drainage improvements that do not increase impervious area and land use, are likely to increase pollutant loads to the receiving water. While sewer improvement projects may increase the amount of rainfall captured and discharged through the MS4 system, they are not introducing new pollutants to the receiving water. However, the final permit does contain***

**requirements that address sewer extensions. Part IV.G.2 requires the Permittee to consider and incorporate, where feasible and cost effective, runoff reduction techniques and green infrastructure in planned municipal upgrades including municipal right of ways. This would include sewer extension projects. The process and procedures developed for SWPPP reviews will describe how the City will ensure that SWPPPs for flood management projects will be assessed.**

Comment IV.F-18: IV.F.1.d.vi.footnote 6: EPA believes that the following flood management projects may be exempt from certain post-construction stormwater management and pollution prevention /good housekeeping requirements: the installation and maintenance of storm sewers, high level storm sewers, Bluebelt projects, or other projects that reduce localized flooding; recreational and aesthetic features and impoundments that do not perform a flood control function and drainage inlets. Post-construction stormwater management requirements must apply to all new development and redevelopment activities that result in land disturbance of greater than or equal to one acre, including projects less than one acre that are part of a larger common plan of development or sale that discharge into the MS4. Pollution prevention/good housekeeping minimum control measure requirements apply to all municipal operations and facilities. Please explain. [EPA on Revised Draft Permit]

**Response IV.F-18: The flood management projects listed in the exemption of footnote 6 appear in the CGP - Appendix B: Table 1 as construction activities that require the preparation of a SWPPP that only includes erosion and sediment controls. DEC agrees that pollution prevention/good housekeeping minimum control measure requirements apply to all municipal operations and facilities including those referenced in the exemption listed in footnote 6. The exemption applies to the retrofitting requirements for flood management projects to achieve additional pollutant removal found in Parts IV.G.1.d.v & IV.F.1.f. The exemption does not excuse the City from assessment and implementation of good housekeeping/pollution prevention control measures required for all municipally owned or operated facilities.**

Comment IV.F-19: Section IV.F.1.e of the Initial Draft Permit requires the Permittee to determine which existing post-construction stormwater management practices, other than those owned by the City or authorized by DEC since 2003, “cause or contribute to water quality standard violations.” By definition, every existing post-construction stormwater management practice that discharges a pollutant through the MS4 to a water body impaired by that pollutant falls within this category. The permit language should explicitly state as much. (Importantly, identifying these facilities will also assist in the development of a retrofit plan, as required to achieve compliance with water quality standards) [NRDC/Riverkeeper/NY-NJ Baykeeper on Initial Draft Permit]

***Response IV.F-19: In response to comments on the Initial Draft Permit, Part IV.F.1.e was revised to require the inventory include all post construction stormwater practices that potentially contribute pollutants to the MS4 system. Older practices that pre-date the construction permitting requirements shall be added as they are found. The mapping requirements found in Part IV.C require that all major structural controls for stormwater discharges that ultimately discharge through the NYC MS4 be mapped.***

Comment IV.F-20: – There appear to be some words missing before “that proposed structural flood control devices have been evaluated...” in Section IV.F.1.f of the Initial Draft Permit. [NRDC/Riverkeeper/NY-NJ Baykeeper on Initial Draft Permit]

***Response IV.F-20: The permit language was clarified in the Revised Draft Permit.***

Comment IV.F-21: Section IV.F.1.f of the Initial Draft Permit merely requires evaluation of impacts of, and opportunities to reduce, water quality impacts of flood management projects. This provision should be amended to require actual implementation of post-construction stormwater management practices in connection with flood management projects. [NRDC/Riverkeeper/NY-NJ Baykeeper on Initial Draft Permit]

***Response IV.F-21: The Initial Draft Permit was revised such that Part IV.F.1.f of the Revised Draft Permit stated, “the SWPPPs prepared for major maintenance or rehabilitation of structural flood control devices in flood management projects shall consider the recommended controls resulting from the facility assessment conducted as required under Part IV.G.1.d.” This language was further refined in response to comments on the Revised Draft Permit (Comment IV.F-22) Part IV.F.1.d of the final permit requires that “the SWPPPs prepared for major maintenance or rehabilitation of structural flood control devices in flood management projects shall, if feasible and cost-effective, incorporate the recommended controls resulting from the facility assessment conducted as required under Part IV.G.1.d” as suggested.***

Comment IV.F-22: Part IV.F.1.d of the Revised Draft Permit provides that “the SWPPPs prepared for major maintenance or rehabilitation of structural flood control devices in flood management projects shall consider the recommended controls resulting from the facility assessment conducted as required under Part IV.G.1.d. This provision needs a definition of “structural flood control devices” and “flood management projects.” Further, it must require more than mere consideration” of controls. The permit must include requirements that ensure that the City implements controls that reduce stormwater pollution associated with such flood control devices to the [MEP]. [NRDC/Riverkeeper/NY-NJ Baykeeper on Revised Draft Permit]

***Response IV.F-22: The final permit defines flood management projects as follows:***

***“Flood management projects refers exclusively to projects designed and functioning to capture, detain, or convey overland flow from a large drainage area to prevent downstream flooding associated with a 100-year or greater storm event. This excludes projects, such as installation and maintenance of storm sewers, high level storm sewers, Bluebelt storm sewers, and drainage inlets and other project to improve drainage, alleviate localized flooding, or reduce coastal flooding.”***

***The final permit requires the SWPPPs prepared for major maintenance or rehabilitation of structural flood control devices in flood management projects shall, if feasible and cost-effective, implement the recommended controls resulting from the facility assessment conducted under Part IV.G.1.d.***

Comment IV.F-23: Section IV.F.1.g. -- This provision states that the SWMP must “require adequate long-term operation and maintenance of [post-construction] stormwater management practices by trained staff, including inspections to ensure that practices are performing properly.” This is ambiguous regarding whether, in the case of privately-owned facilities, such "staff" would be public agency staff or staff of the private property owner. The provision should be expanded to require the City to ensure operations and maintenance of post-construction practices at private facilities in a manner consistent with the requirements of the [CGP], including a requirement to develop an inspection and enforcement program similar to the one which the Draft Permit (Part IV.H.) describes for industrial and commercial sites.  
[NRDC/Riverkeeper/NY-NJ Baykeeper on Initial Draft Permit & Revised Draft Permit]

***Response IV.F-23: The permit language requires the City develop, implement and enforce a program that requires adequate long term operation and maintenance of stormwater practices by trained individuals including inspections to ensure the practices are performing properly. The SWMP submitted to DEC for approval, will include procedures detailing how the City will ensure that practices at private facilities are inspected and maintained. The City may elect to create “green jobs” where third party contractors perform this function (similar to the construction site inspections) and certify that the practice is maintained and performing properly or the City may elect to have their own staff perform this function. As part of the approval, DEC will review the procedures to ensure that there are adequate checks and balances to ensure the procedures are effective and the permit requirements for long term maintenance are met.***

Comment IV.F-24: Section IV.F.1.g of the Initial Draft Permit refers to “trained staff”, therefore, the MS4 should be required to develop a program for training staff in

operations and maintenance of post construction controls or for the inspection of these practices. [EPA on Initial Draft Permit]

***Response IV.F-24: Part IV.F.1.g.iii of the final permit includes a training requirement for individuals responsible for inspecting and maintaining post-construction stormwater controls to ensure long term effectiveness. DEC does not think the permit should limit the maintenance of practices to staff employed by the City. The City may elect to promote “green jobs” by implementing a certification program that would train private contractors on the inspection and maintenance requirements. The final permit would allow for this option provided that the individuals responsible for inspecting and maintaining the post-construction controls are adequately trained and the program is effective in ensuring the long term maintenance of post construction controls.***

Comment IV.F-25: The reference, in Section IV.F.1.h of the Initial Draft Permit, to “watershed improvement strategies” and “watershed plan reduction goals,” which appears to be borrowed from the MS4 General Permit, seems to be inapplicable to this permit as currently drafted. However, since the permit must be amended to include requirements to develop compliance plans to achieve water quality standards in impaired waters, this section could be amended to refer to such plans instead. [NRDC/Riverkeeper/NY-NJ Baykeeper on Initial Draft Permit]

***Response IV.F-25: The Initial Draft Permit was revised to delete the references to “watershed improvement strategies” and “watershed plan reduction goals.”***

Comment IV.F-26: – Since the permit must be amended to include requirements to develop compliance plans to achieve water quality standards in impaired waters, this section could be amended to refer to such plans instead.

***Response IV.F-26: See Response to Comment II.A-2***

Comment IV.F-27: The provision in Section IV.F.1.h.v of the Initial Draft Permit requires that “[a] banking and credit system must at minimum ensure that...mitigation is applied for retrofit or redevelopment.” The term retrofit is undefined here; the provision also gives no indication of what is meant by “mitigation is applied.” DEC should clarify this provision. [NRDC/Riverkeeper/NY-NJ Baykeeper on Initial Draft Permit]

***Response IV.F-27: The final permit has removed the condition that a banking and credit system must at a minimum ensure that “mitigation is applied for retrofit or redevelopment” and specifies that pollutant reductions are achieved through retrofits or redevelopment that includes structural water quality treatment devices. The definition of retrofits is provided in Part VI.B.***

Comment IV.F-28: Section IV.F.h of Initial Draft Permit.: This provision must be revised to state that any “offsite alternative stormwater management” receiving credit under a “banking and credit” system must be associated with retrofit projects that are not otherwise required by law. For example, as currently drafted, this provision seems to allow retrofits within CSO drainage areas that are undertaken in compliance with the City’s CSO Consent Order to generate “credits” towards meeting the Draft Permit’s “no net increase” requirement; allowing such retrofits to generate credit would unlawfully grant the City carte blanche to allow increased MS4 discharges that cancel out pollution reductions achieved in CSO areas. It is unclear whether this comment was addressed in the Revised Draft Permit (Section IV.F.g).[NRDC/Riverkeeper/NY-NJ Baykeeper on Revised Draft Permit]

***Response IV.F-28: Banking and Credits are only allowed to achieve the no-net increase requirement contained in Part II.B.1 of the final permit. Reference to CSO drainage areas was removed from Part II.B.1 and Part IV.F.1.h of the Initial Draft Permit so that the Permittee does not allow increased MS4 discharges to cancel out pollution reductions achieved in CSO areas. The Permittee must ensure that there are not increases in MS4 discharges to impaired waters.***

Comment IV.F-29: Part IV.F.1.h of the Revised Draft Permit provides that the City may include a banking and credit system that would allow for offsite alternative stormwater management in lieu of or in addition to onsite stormwater management in development projects. The provision includes several limitations on the banking and credit system that may make it ineffective and difficult to implement and use successfully. In particular, the requirement to use a two-to-one ratio for any credit, and to only permit offsite credits within the same watershed, may undercut the value of any credit banking system for project developers. The final permit should be revised to provide additional flexibility to the City in designing a stormwater management banking and credit system. [NYC Law on Revised Draft Permit]

***Response IV.F-29: The banking and credit system for new development is only allowed to achieve the no-net increase requirement contained in Part II.B.1. Therefore, offsite credits must be within the same watershed. Given that the banking and credit system is directly related to the construction size threshold, this concern may be addressed as part of the construction size threshold study. Any changes to the banking and credit requirements will be addressed as part of the permit modification or renewal.***

Comment IV.F-30: IV.F.1.g of the Revised Draft Permit requires the SWMP to describe procedures for inspections of post-construction stormwater management practices to ensure that the measures identified in the approved SWPPPs are in place and performing properly. As is common in other City-inspection regimes and in other jurisdictions’ administration of construction stormwater requirements as part of their MS4 programs, the City understands that third party inspectors may be used to fulfill



this requirement, and believes the permit allows the use of such third party inspectors.  
[NYC Law on Revised Draft Permit]

***Response IV.F-30: The final permit allows for third party inspectors to fulfill this requirement provided they are adequately trained in the long term operation and maintenance of post construction stormwater practices. If the City elects to rely on third parties to implement any portion of the SWMP, they must provide adequate assurance that the third party will comply with permit requirements applicable to the work they will perform.***

Comment IV.F-31: Parts IV.E and IV.F of the Revised Draft Permit include several references to [NYSSMDM], along with the phrase “most current version or its successor.” We understand the intent of this language to require that the City’s program require that SWPPPs be designed in accordance with the standard that is current and applicable at the time the SWPPP review application is submitted. However, as currently drafted, the reference to successor versions could be read to require that SWPPPs be redesigned after design completion if an update to the relevant design standards is issued between design and completion. As DEC recognized in an analogous situation addressed by its recently issued draft transition policy regarding the 2015 update to the [NYSSMDM], such a result would impose unnecessary and inappropriate economic impacts on certain construction activities that had already started the design process under the prior design standards. Thus, the final permit should be updated to make clear that SWPPP applications should meet the standards in the version in effect at the time of their submittal [NYC Law on Revised Draft Permit]

***Response IV.F-31: References to the most current version or its successor are only within the local law requirements so that it is clear that the City must make the necessary provisions so that they have the legal authority to review SWPPPs for conformance with the most current version of the NYS Design Standards. It is not intended to require revision to projects that have gone through the review and approval process.***

## **PART IV.G – POLLUTION PREVENTION/GOOD HOUSEKEEPING FOR MUNICIPAL OPERATIONS**

Comment IV.G-1: The catch basin cleaning program should specifically require the same method of handling catch basins as the individual SPDES permits do for CSOs and include retrofitting where needed every 3 years. This includes specifically requiring the proper operation and maintenance, inspection and cleaning of storm sewers regularly. [EPA on Initial Draft Permit and Revised Draft Permit]

***Response IV.G-1: The final permit (Part IV. I – Control of Floatable and Settleable Trash & Debris) clarifies the catch basin cleaning program requirements as suggested.***

Comment IV.G-2: IV.G.1.a. – All of the types of operations and facilities listed in the second sentence “contribute or potentially contribute POCs.” Therefore, the second sentence should be revised to state: “The operations and facilities shall include...” (rather than “may include”). [NRDC/Riverkeeper/NY-NJ Baykeeper on Initial Draft Permit]

***Response IV.G-2: The final permit reflects the suggested language.***

Comment IV.G-3: Parts IV.G.1.b, G.1.d. & G.2 and G.3 of the Initial Draft Permit use the phrase [MEP]. How will [DEC] determine if cost effective runoff reduction techniques and green infrastructure were considered to the MEP during new development and redevelopment of municipal properties? [EPA on Initial Draft Permit]

***Response IV.G-3: The requirement to consider and incorporate, runoff reduction and green infrastructure practices during new development and redevelopment of municipal properties goes beyond the requirements of the CGP and requirements found in Part IV.F. Projects that trigger the construction threshold would need to incorporate GI and runoff reduction, if feasible and cost effective for redevelopment, beyond the minimum requirements in the CGP. For those practices that do not trigger the construction threshold, the City must also consider and incorporate, where feasible and cost-effective, runoff reduction techniques to planned upgrades of municipal properties and municipal right of ways regardless of the amount of soil disturbance associated with such upgrades. The final permit provides examples of low cost green infrastructure to be considered and defines consideration of feasibility to include type of land use or municipal operation, suitability of soils, presence of utilities, potential for exacerbating existing contamination problems, safety issues, maintenance requirements, and expected lifespans of available technologies.***

Comment IV.G-4: General Comment - Snow Removal: The permit should be explicit that the MS4 is not authorized to dispose of snow directly to the waters of the United States/State or directly to the MS4. Discharges from [P]ermittee-owned snow disposal sites and discharges associated with the [P]ermittee's snow management practices could be authorized under the permit when these sites/practices are operated using [BMPs] designed to prevent pollutants in the runoff and prevent excursions of any NYS water quality standard. Examples of these practices include locating snow piles in upland areas; designating different disposal requirements for "clean" or "dirty" snow; and providing a storage area with vegetated buffers or filtration through vegetated swales to settle out and recover solid materials, (such as traction material, pet waste, trash, etc.) for disposal. [EPA on Initial Draft Permit & Revised Draft Permit]

***Response IV.G-4: Part IV.G requires the City to develop and implement a pollution prevention/good housekeeping program for municipal operations that includes snow removal and disposal and requires a program to control and reduce pollutants in these discharges to the MEP. As part of the self-assessment of municipal operations, including snow dumping and disposal, the City must identify and prioritize efforts based on receiving waters and the need for modification or improvement. As part of the self-assessment, the City is expected to consider all practicable options including the management practices suggested.***

Comment IV.G-5: The self-assessment of municipal operations contained in Part IV.G.1.c should be required not only once every five years, but an initial assessment also should be required in connection with development of the SWMP. [NRDC/Riverkeeper/NY-NJ Baykeeper on Initial Draft Permit and Revised Draft Permit]

***Response IV.G-5: According to the City's preliminary estimates, there are well over 1000 facilities and operations in the MS4 areas of the City that will be subject to the Pollution Prevention/Good Housekeeping requirements of Part IV.G. It would be unreasonable to require the City to assess all of these within the first 3 years of permit coverage. However, in response to comments on the Initial Draft Permit, the final permit requires the City to prioritize facilities and conduct the initial self-assessment of high priority facilities and operations during the development of the SWMP as suggested.***

Comment IV.G-6: IV.G.1.d. – This provision states that the SWMP plan must "determine management practices, policies, and procedures that will be developed and implemented..." Development of these practices, etc., should be part of the process of developing the SWMP. This should be revised to state that the SWMP itself must identify these practices, policies and procedures, not merely present a plan for subsequently developing them. [NRDC/Riverkeeper/ NY-NJ Baykeeper on Initial Draft Permit and Revised Draft Permit]

***Response IV.G-6: The final permit requires that the SWMP identify management practices, policies and procedures that will be implemented as suggested.***

Comment IV.G-7: Part IV.G.1.e [of the Initial Draft Permit] should delete the reference to “Permittee’s capabilities.” The Permittee’s existing capacity should not be a limiting factor on the implementation of pollution prevention and good housekeeping practices; rather, where needed to meet the permit’s pollution control requirements, the Permittee should be required to develop additional capacity and capabilities.

[NRDC/Riverkeeper/NY-NJ Baykeeper on Initial Draft Permit and Final Draft Permit]

***Response IV.G-7: The final permit no longer references the "Permittee's capabilities" as suggested.***

Comment IV.G-8: The requirement contained in Part IV.G.2 for “new development or redevelopment of municipal properties” to use “runoff reduction techniques” (which include green infrastructure), should not be limited by the term “cost-effective” or by an undefined “maximum extent practicable.” Rather, municipal properties must be subject to numeric runoff reduction performance standards set forth in the [NYSSMDM], just as all other sites should be. The permit should make clear that development and redevelopment within the public right of way, not only on municipally owned lots, are also subject to this requirement. Further, the permit should provide, similar to the MS4 General Permit (Section VII.A.6.b.), that the [C]ity must “consider and incorporate runoff reduction techniques and green infrastructure in the routine upgrade of the existing stormwater conveyance systems,” regardless of whether such projects would otherwise trigger application of the post-construction requirements under Section IV.F.

[NRDC/Riverkeeper/NY-NJ Baykeeper on Initial Draft Permit]

***Response IV.G-8: The requirement to consider and incorporate the runoff reduction and green infrastructure during planned municipal upgrades including municipal right of ways, if feasible, applies to all projects including those that would not otherwise be subject to the post construction requirements contained in Part IV.F. Planned municipal projects that trip the soil disturbance threshold would be required to incorporate the runoff reduction and green infrastructure practices, if feasible and cost effective, even if they have met the minimum requirements for redevelopment set forth in the CGP. Language has been added to indicate that the requirement to consider and incorporate runoff reduction techniques applies to planned upgrades of municipal properties and municipal right of ways, if feasible and cost effective, is required regardless of the amount of soil disturbance associated with such upgrades.***

Comment IV.G-9: In our comments on the version of this provision [Part IV.G.2] that appeared in the Initial Draft Permit, we stated that it should not establish a weaker “runoff reduction” standard for “new development or redevelopment of municipal properties” that applies to all development and redevelopment projects generally. The Revised Draft Permit eliminates from this section any reference to “new development or redevelopment of municipal properties.” Please confirm that this change means that such projects would be subject to the post-construction standards applicable under Part IV.F. [NRDC/Riverkeeper/NY-NJ Baykeeper on Revised Draft Permit]

***Response IV.G-9: Any planned upgrades to municipal facilities must consider and, if feasible, incorporate cost effective runoff reduction techniques and green infrastructure. This requirement goes above and beyond the requirements of Part IV.F as it applies to projects that would not trigger the construction site threshold and otherwise be subject to the requirements under Part IV.F and requires consideration of runoff reduction and green infrastructure practices for redevelopment projects beyond that contained in the CGP. This does not excuse new development or redevelopment projects that exceed the soils disturbance threshold from the minimum requirements contained in Part IV.F.***

Comment IV.G-10: This provision [Part IV.G of the Revised Draft Permit], now requires the City to “Consider and if feasible incorporate, to the MEP, runoff reduction techniques and green infrastructure during planned municipal upgrades including municipal rights of way.” This language appears designed to address one our comments on the Initial Draft Permit, and we appreciate DEC’s effort to address right of way projects explicitly. However, as drafted, this provision remains too vague, as it qualifies the City’s obligation with the term “MEP” (“maximum extent practicable”) but does not provide a means of determining what is “feasible...to the maximum extent practicable.” The provision identifies several appropriate technical factors to consider in determining what is “feasible,” but the provision, as drafted, states that runoff reduction and green infrastructure, even if feasible, must be implemented in right-of-way projects only “to the MEP.” As EPA Region 2 emphasized in its comments on the Initial Draft Permit , Part IV.G repeatedly uses the term “MEP” to qualify various obligations of the [P]ermittee, but provides no decision-making criteria to determine whether the City has in fact done something (such as integrating runoff reduction and green infrastructure into any given right-of-way project) “to the MEP.” While the “if feasible” language is appropriate, the “to the MEP” language, as written, is so vague as to hinder the enforceability of the provision; it provides no objective metrics or criteria to evaluate compliance. The “if feasible” limitation is, by itself, a sufficient qualifier on the obligation imposed by this permit provision; DEC should strike “to the MEP” from this provision entirely. [NRDC/Riverkeeper/NY-NJ Baykeeper on Revised Draft Permit]

***Response IV.G-10: The reference to MEP is meant to address the concern associated with the cost of implementation. A practice may be technically feasible but the cost to install may be wholly disproportionate to the benefit***

***provided. Cost must always be a consideration. To suggest otherwise would be unrealistic. The final permit requires the Permittee to consider cost effective runoff reduction techniques and green infrastructure practices during planned municipal upgrades. The reference to MEP has been removed as suggested.***

Comment IV.G-11: DEC should add more examples of runoff reduction and green infrastructure techniques to this section. The ones listed are a good start, but others should be included, such as right-of-way bioswales and greenstreets (which the City is very familiar with from its green infrastructure program under the CSO Consent Order), as well as permeable pavement and street trees. [NRDC/Riverkeeper/NY-NJ Baykeeper on Revised Draft Permit]

***Response IV. G-11: The listing of examples is not meant to be an exhaustive list. However, given that bioswales and greenstreets are a large part of the City's existing Green Infrastructure Program, the final permit lists them as additional examples of cost effective runoff reduction and green infrastructure techniques as suggested.***

Comment IV.G-12: In our comments on the Initial Draft Permit, we stated that the permit should provide, similar to the [MS4 GP] (Section VII.A.6.b.), that the City must "consider and incorporate runoff reduction techniques and green infrastructure in the routine upgrade of the existing stormwater conveyance systems," regardless of whether such projects would otherwise trigger application of the post-construction requirements under Section IV.F. Please clarify whether the new Part IV.G.2 encompasses such projects. If they are not so encompassed, DEC should add language to include them. [NRDC/Riverkeeper/NY-NJ Baykeeper on Revised Draft Permit]

***Response IV.G-12: Part IV.G.2 of the final permit encompasses all planned municipal upgrades regardless of whether such projects would otherwise trigger application of the post construction requirements under Section IV.F.***

Comment IV.G-13: There is also a great need- and a huge opportunity- to incorporate green infrastructure routinely into [NYC] projects in the public right-of-way, such as street and sidewalk rehabilitation, water and sewer utility projects, parks, playgrounds, greenways, and others. Similarly, improvements to public drainage infrastructure, since it often has the undesirable side-effect of directing more polluted runoff to nearby waterways, should be accompanied by green infrastructure projects that simultaneously help protect water quality and further improve flood control. [SWIM Coalition on Revised Draft Permit]

***Response IV.G-13: The Department agrees that incorporation of green infrastructure into City projects in the public right of way provides a great opportunity for water quality improvement and flood protection. Part IV.G.2 of the final permit requires all planned municipal upgrades to consider and***

***incorporate, where feasible and cost effective, runoff reduction and green infrastructure techniques.***

Comment IV.G-14: The permit should include specific requirements concerning management of road salt storage facilities. For example, residents of south Brooklyn have reported repeated problems with runoff from uncovered salt piles at the City's salt storage facility at the Fountain Avenue Landfill. [NRDC/Riverkeeper/NY-NJ Baykeeper on Revised Draft Permit]

***Response IV.G-14: Part IV.G.1.a of the final permit has been revised to include road salt storage facilities. The final permit requires the City provide a prioritized inventory of municipal operations and facilities prioritized into high, medium and low categories on the basis of the potential for water quality impact using criteria such as discharges of pollutants to impaired waters, pollutant sources on site, proximity to a waterbody and history of problems that impact water quality. High priority facilities would need to be assessed as part of the SWMP development to determine the adequacy of pollution prevention and good housekeeping practices. The assessment will provide recommendations and time frames for modification of practices where they are found to be inadequate. Facilities with high frequency of water quality related complaints such as described would likely be assigned a higher priority for assessment.***

Comment IV.G-15: As part of the good housekeeping and pollution prevention program for municipal operations and facilities under Part IV.G.1 of the Revised Draft Permit, municipal operations and facilities that would otherwise be subject to the statewide MSGP will be required "to prepare and implement provisions in the SWMP that comply with" Parts III.A and III.C through F of the MSGP. As currently drafted, this provision implies that the SWMP will "implement" these terms of the MSGP. However, the SWMP does not implement programs; rather, it is a planning document that sets forth the various programs and BMPs that the City will implement to manage stormwater pollution, along with measureable goals and timelines for implementation. The final permit should clarify that MSGP coverage can be implemented through procedures identified in the SWMP, and that the SWPPPs required for all MSGP facilities are not required to be included in the SWMP itself. [NYC Law on Revised Draft Permit]

***Response IV.G-15: The SWMP plan is more than a planning document that sets forth the various programs. It is a comprehensive plan that is used to document developed, planned and implemented SWMP elements. The final permit clarifies that the Permittee has the option of maintaining MSGP coverage for municipally owned facilities and operations or covering these facilities under the NYC MS4 Permit. Part IV.G.i specifies the requirements for those facilities or operations that will be covered under the NYC MS4 Permit. Municipally owned or operated facilities or operations discharging stormwater associated with industrial activity may be authorized under the***

***final permit provided that they comply with the specified components of the SPDES MSGP. Parts III.A and III.C thru F of the SPDES MSGP outlines the Stormwater Pollution Prevention requirements that must be developed for each facility. The SWPPPs developed for NYC owned and operated facilities that will be covered under the NYC MS4 Permit and resulting records and reports become part of the overall SWMP. SWPPPs developed for facilities covered under the MSGP are not part of the overall SWMP plan, but any inspection records required under Part IV.H.3 would be included in the SWMP plan.***

## **PART IV.H – INDUSTRIAL & COMMERCIAL STORMWATER SOURCES**

### **Comment IV.H-1: INDUSTRIAL OVERSIGHT**

Some parts of the draft permit seem inadequate for the ultra-urban environment of [NYC]. Under Industrial and Commercial Stormwater Sources (page 21), the City is to inventory all industrial and commercial sites that could discharge POCs. We would like to know whether the aggregated effects of smaller establishments should also be considered. While each establishment may not contribute a significant pollutant load, if multiple commercial entities are concentrated in a relatively small area, they may collectively constitute a pollutant source. For instance, there are neighborhoods with many small scale automotive repair shops. [NYC SWCD on Initial Draft Permit]

In terms of downhill rain runoff how will [the NYC MS4 Permit] address runoff that during heavy rains can access low line Open Industrial sites that are used for storage or salvage yards with possible soil contamination issues? *Example: Edkins Salvage Yard 2239 Richmond Terrace and (former Truscanti Boat Company) Perfello Construction 2319 Richmond Terrace. (former Archer Daniels Midland Company/Staten Island Manhallan Project Storage site) Dolan Transportation, 2393 Richmond Terrace [North Shore Waterfront Conservancy of Staten Island, Inc. on Initial Draft Permit]*

***Response IV.H-1: The Permittee has a number of requirements to address with regard to the Industrial & Commercial Stormwater Sources during the first permit cycle, including development of an inventory of industrial and commercial sources that could discharge pollutants into the MS4. The aggregated effects of multiple industrial/commercial entities and runoff from low lying open industrial sites will be diminished as requirements for Industrial and Commercial Stormwater Sources in the final permit are implemented. Storage or salvage yards with possible soil contamination issues are addressed under DEC remediation regulations and cannot be addressed by this permit alone. NYC is also conducting an independent***



***study on Open Industrial Uses to address environmental pollution from open industrial facilities that are cited in this comment.***

Comment IV.H-2: [EPA] Region 2 recommends requiring Standard Industrial Classification (SIC) codes in addition to requiring North American Industry Classification System (NAICS) codes [in Part IV.H.1.ii] to assist determinations of whether there is a need to obtain coverage under the NYSDEC MSGP. [EPA on Initial Draft Permit]

***Response IV.H-2: The final permit (Part IV.H.1.ii) references both Standard Industrial Classification (SIC) codes in addition to North American Industry Classification System (NAICS) codes as suggested.***

Comment IV.H-3: Section H.1.a.1.iii (2) Industrial and Commercial Stormwater Sources (on page 21) What is the definition of "significant POC"? [NYC SWCD on Initial Draft Permit]

***Response IV.H-3: For the purposes of inventorying facilities that would be considered to be significant sources of POC's, the City would take into account the history of complaints, visual observations of poor housekeeping, history of spills, inspections and screening/sampling showing that stormwater discharges exceed benchmarks contained in the MSGP.***

Comment IV.H-4: Part IV.H.1.a.iii (3) [of the Revised Draft Permit] requires "other industrial or commercial sites/sources where the site/source generates a significant amount of POCs for which the water segment is impaired." However, there is no test for what a "significant amount" looks like. The Permittee, the industries and commercial sources covered by this clause, the public, and the regulators cannot discern which other sources will be included on the inventory through these permit terms. The updated draft permit language changed the intent and design of this clause from being inclusive of sources that contribute to an impairment to a subset class of sources that are significant contributors to an impairment, without defining significance. The State must reverse this decision to exempt sources of pollutants which may be contributing to impairments from even being inventoried. [NRDC/Riverkeeper/NY-NJ Baykeeper on Revised Draft Permit]

***Response IV.H-4: The inventory would include all commercial and industrial facilities that the City is concerned could discharge significant amounts of POCs to impaired waters. In making a determination of significance, the City would consider history of complaints, visual observations of poor housekeeping, materials managed on site, history of spills, inspections and screening/sampling showing that stormwater discharges exceed benchmarks contained in the MSGP or any other indicator that would suggest that improved stormwater controls may be needed.***

Comment IV.H-5: In IV.H.1.a.iii (1)(a), the DEC excludes from its inventory any industrial facilities which fit the definition of construction sites as defined at 40 CFR § 122.26(b)(14)(x). DEC never explains its rationale for...choosing to remove these sites from coverage [between the Initial Draft Permit and the Revised Draft Permit]. We object to this arbitrary exclusion. [NRDC/Riverkeeper/NY-NJ Baykeeper on Revised Draft Permit]

***Response IV.H-5: The requirements for construction sites as defined at 40 CFR § 122.26(b)(14)(x) are discussed in Part IV.E of the final permit. Part IV.E.1.I requires the Permittee to establish and maintain an inventory of active construction sites, including the location of the site, owner/operator contact information.***

Comment IV.H-6: The [Initial] Draft Permit includes a provision requiring the development of a plan to require certain industrial and commercial facilities, which are not subject to the requirements of the [MSGP] or an individual SPDES permit but which generate significant contributions of pollutants of concern to impaired waters, to select, install, implement and maintain cost-effective stormwater control measures. Thus, the City will be required to develop a regulatory program for these facilities even though they are not subject to any existing SPDES requirements under state law. This provision goes beyond the legal requirements for MS4 permits and creates an unnecessary additional burden on the City in carrying out the MS4 program, and it should be deleted from the Draft Permit. Requiring the City to create a new class of regulated facilities under the auspices of the MS4 program will substantially add to the overall burden of developing an effective and successful SWMP. Therefore, the City recommends deleting Section IV.H.2 from the draft Permit in its entirety. [NYC Law Department on Initial Draft Permit]

***Response IV.H-6: The section on stormwater control measures for unpermitted industrial and commercial facilities in the permit has been substantially deleted. The Permittee will still be expected to maintain an inventory of commercial and industrial users including those that are suspected to contribute significant pollutants to impaired waters. If the facility is determined to be a significant contributor of POCs, the SWMP must include a procedure for the Permittee to refer those facilities to DEC for SPDES permitting including the reason or justification to permit the facility. The SPDES permit - issued to the industrial or commercial facility - would outline the required controls necessary to meet technology and water quality based effluent limits. Prior to any referral to DEC, the Permittee must ensure that all illicit discharges from the facility are eliminated.***

Comment IV.H-7: In IV.H.2 of the Revised Draft Permit, the DEC made wholesale changes to the proposed permit terms that remove from coverage, with no explanation, an entire class of sources. [NRDC/Riverkeeper/NY-NJ Baykeeper on Revised Draft Permit]

***Response IV.H-7: See Comment IV.H-6 for an explanation as to why Section IV.H.2 was substantially deleted from the Revised Draft Permit.***

Comment IV.H-8: According to the updated factsheet that accompanied the Revised Draft Permit, the DEC “[r]emoved [a] section from the Initial Draft Permit requiring the City to oversee and require controls for unpermitted industrial and commercial facilities not covered under MSGP.” The loss of a requirement that unpermitted sources control their stormwater impacts is contrary to the clear terms of the [CWA]’s prohibitions against discharging pollutants into the waters of the United States without permits. There is no reason to exempt unpermitted sources from stormwater control minimums. Illicit, unpermitted sources of stormwater into all waterways should be covered, whether or not the waterway is impaired – to require otherwise would be illegal. [NRDC/Riverkeeper/NY-NJ Baykeeper on Revised Draft Permit]

***Response IV.H-8: Section IV.H.2 of the Initial Draft Permit applied to industrial/commercial sites that do not meet the definition of “industrial activity” in 40 CFR 122.26(b) and would not otherwise require coverage under a NPDES/SPDES permit. This section was removed from the Revised Draft Permit because it went beyond the legal requirements of MS4 permits and created an additional burden on the City in carrying out the MS4 program. However, the purpose of the NYC MS4 permit is to gain an understanding of the system and how it is being used and develop a program so that the system is not being used to discharge pollutants to surface waters of the State. Therefore, the final permit requires the City develop and maintain an inventory and determine whether such facilities have the potential to contribute significant amounts of pollutants to their system. Illicit discharges from industrial/commercial properties must be eliminated. The City would refer those facilities determined to be a significant contributor of pollution (not illicit discharges) to DEC for permitting as allowed under 6 NYCRR 750-1.5(a)(10). Once permitted, those facilities would then be included in the oversight program developed in accordance with Part IV.H.3.***

Comment IV.H-9: While the [Revised Draft Permit] does include a requirement to develop a plan to inspect and assess these unpermitted sources, the proposed language is, like the rest of the permit, exceedingly vague. The permit requires that illicit discharges be eliminated, but, given the structure of the subsection, this requirement would seem to only apply to facilities once there has been inspection by the [P]ermittee. The inspection and assessment plan would only, however, be developed via the SWMP – three years from the EDP – and contains no requirements for when inspections will begin, or when assessments must be completed. Essentially, the permit allows the

[P]ermittee to develop its own plan for inspecting sources that it does not have to inventory, gives no timeframe for when the [P]ermittee must begin making assessments, provides no standards as to how to judge significance of impact, sets no minimum controls for elimination of discharges, and, perhaps most confusing of all, prohibits illicit discharges while - conversely - allowing such discharges which significantly contribute to an impairment to continue while the [P]ermittee requests that the State consider issuing a permit. [NRDC/Riverkeeper/NY-NJ Baykeeper on Revised Draft Permit]

***Response IV.H-9: The Department disagrees with this characterization of the permit requirements.***

Comment IV.H-10: The State should revert to its original plan – requiring the Permittee catalog unpermitted sources of stormwater pollution – and demand that the Permittee protect water quality standards by ensuring that any of these sources in need of permits get them, immediately. [NRDC/Riverkeeper/NY-NJ Baykeeper on Revised Draft Permit]

***Response IV.H-10: The NYC MS4 Permit requires that the Permittee develop processes and procedures to ensure that all facilities found to discharge stormwater associated with industrial activity (as defined in 40 CFR 122.26) through the NYC MS4 system are permitted under the MSGP. The City is expected to ensure that any of these facilities in need of permits get them immediately as suggested. Part IV.H.2 applies to those commercial or industrial facilities that are not required to have permit coverage under 40 CFR 122.26 but nevertheless are suspected to discharge pollutants at levels that warrant permit coverage. Under 6 NYCRR 750-1.5(a)(10), discharges composed entirely of stormwater, to which no pollutant(s) has/have been added by industrial, commercial, or other activity, and otherwise not regulated pursuant to 40 CFR Parts 121, 122, 123 and 124, do not require a SPDES permit under ECL Article 17, Titles 7 or 8... unless the particular stormwater discharge has been identified by the regional administrator or the Department, as a significant contributor of pollution. The City would refer those facilities found to be a significant contributor of pollution to DEC for permitting as DEC is the permitting authority.***

Comment IV.H-11: Page 22 – Part IV.H.2.a.vi: The permit should require [DEP] to include a description of how [DEP] will assess if the facility has, to the MEP, considered runoff reduction techniques and green infrastructure during new development or redevelopment of industrial and commercial facilities. [EPA on Initial Draft Permit & Revised Draft Permit]

***Response IV.H-11: Part IV.F requires the Permittee to develop, implement and enforce a post construction stormwater management program for all new development and redevelopment (including industrial and commercial***

***facilities) that provides protection equivalent to the CGP and ensure SWPPPs that are subject to post construction stormwater management requirements comply with the NYSSMDM runoff reduction and green infrastructure requirements. If a stormwater management practice is designed and installed in accordance with the performance standards in the NYSSMDM (January 2015) or has been demonstrated to be equivalent and is properly operated and maintained, then MEP will be assumed to be met for post-construction stormwater discharged by the practice.***

Comment IV.H-12: IV.H.2.a.vi. -- The requirement for “new development or redevelopment of industrial and commercial facilities” to use “runoff reduction techniques” (which include green infrastructure), should not be limited by the undefined term “maximum extent practicable.” Rather, such facilities must be subject to numeric runoff reduction performance standards set forth in the [NYSSMDM], as per Section IV.F., just as all other development and redevelopment exceeding the threshold size should be. [NRDC/Riverkeeper/NY-NJ Baykeeper]

***Response IV.H-12: New development and redevelopment of industrial and commercial facilities that trip the soils disturbance threshold would be subject to the numeric runoff reduction performance standards set forth in the NYSSMDM as specified in Part IV.F. If a stormwater management practice is designed and installed in accordance with performance standards in the NYSSMDM (most current version or its successor) or has been demonstrated to be equivalent and is properly operated and maintained, then MEP will be assumed to be met for post-construction stormwater discharged by the practice.***

Comment IV.H-13: DEC must delete the words “cost effective,” [from Part IV.H.2.d.2] since the legal requirement to meet water quality standards is not limited by a “cost-effectiveness” criterion. Moreover, the permit must apply water quality-based effluent limitations to all discharges from the MS4, to ensure that discharges do not cause or contribute to water quality standards violations, regardless of whether a TMDL has been developed. [NRDC/Riverkeeper/NY-NJ Baykeeper on Initial Draft Permit]

***Response IV.H-13: The final permit no longer includes this language as Part IV.H.2.d.2 was removed.***

## **PART IV. I – CONTROL OF FLOATABLES & SETTLEABLE SOLIDS**

Comment IV.I-1: Several comments were received on the Initial Draft Permit regarding the length of time allowed to plan for and begin implementing the floatable and settleable solids study to determine the baseline loading associated with the MS4 system. [NRDC/Riverkeeper/NY-NJ Baykeeper on Initial Draft Permit][EPA on Initial Draft Permit]

***Response IV.I-1: The study for assessing the baseline trash load is a project that will be performed by contractors. As part of NYC's contract procedures, it will take a minimum of 18-24 months for the contract and award bidding process making a shortened schedule unachievable. However, in response to comments, the Revised Draft Permit added a requirement for an interim media campaign that will leverage on NYC's unique opportunities and ability to generate main stream media attention on this critical issue. The media campaign is expected to raise public awareness of the trash and litter problem, encourage proper disposal and gain public support for NYC's future efforts to reduce the amount of waste generated on land and control marine debris.***

Comment IV. I-2: Please include a date in Part IV.I.3 by which the floatables study is to be completed as well as the date for implementing a Control of Floatables and Settleable Solids Program. [EPA on Initial Draft Permit & Revised Draft Permit]

***Response IV.I-2: Part IV.I.3 of the final permit requires that within 3 months of DEC's approval of the final work plan, the Permittee shall propose a schedule with an end date not to exceed 3 years to determine the loading rate of floatable materials from the MS4 to waterbodies listed as impaired for floatables. The permit (thru modification or renewal) will establish the start date for the floatables and settleable solids management program implementation when the reduction goals are established. In the interim, the City will continue to implement existing or improved controls and a litter media campaign to reduce floatable and settleable solids in their MS4 discharge.***

Comment IV.I-3: Does the [DEC] intend to review the draft workplan cited in this section and when would that review be completed? Is the "final proposed workplan" in paragraph 2 the same as the approved final workplan? [EPA] Region 2 recommends that in the 4<sup>th</sup> paragraph of this section "final workplan" should be used consistently for clarity. [EPA on Initial Draft Permit]

***Response IV.I-3: Part IV.I.3 requires that the draft work plan be submitted for review and approval within 2 years of the effective date of the final permit. The 4<sup>th</sup> paragraph of this section has been revised as suggested.***

Comment IV.I-4: Two years to plan for the start of an approved study is too long. Since NYC conducts floatables monitoring for its annual CSO Floatables Monitoring Program Report, the time line for developing a workplan to determine the amount of floatables discharged should be significantly shortened from two years. As an example, the San Francisco Municipal Regional Stormwater Permit (NPDES No. 00612008) includes a requirement to complete a baseline trash load assessment in two years and 3 months. [EPA on Initial Draft Permit & Final Draft Permit]

***Response IV.I-4: The study for assessing the baseline trash load is a project that will be performed by contractors. The Permittee requires a minimum of 18-24 months for the contract bidding and award process. San Francisco's baseline trash load assessment was for a much smaller area than in NYC's baseline trash load assessment.***

Comment IV.I-5: The proposed cleanup plan should be due at the same time as the SWMP. As currently drafted, a final work plan, just for the loadings study, is not due until three years after the effective date of the permit, and commencement of the study is not required until three years after DEC approval of the work plan -- i.e., the deadline to commence the study would be more than five years from permit issuance. There is no justification for such a long timeline dedicated simply to initiating a study. The permit must require the [C]ity to begin implementing significant new floatables reduction measures within the term of the permit and must establish deadlines for ultimate compliance with applicable water quality standards. [EPA on Initial Draft Permit & Revised Draft Permit][NRDC/Riverkeeper/NY-NJ Baykeeper on Initial Draft Permit]

***Response IV.I-5: The study for assessing the baseline trash load is a project that will be performed by the Permittee's contractors. The Permittee requires a minimum of 18 months for the contract bidding and award process. In the interim, the City will continue to implement existing or improved controls and a litter media campaign to reduce floatable and settleable solids in their MS4 discharge. The implementation of a litter campaign targeted at reducing the amount of waste generated on land, encouraging proper disposal and gaining public support for future additional controls is an important first step in floatables reduction that will occur within the term of the permit.***

Comment IV.I-6: We also recommend that [DEC] state that the objective of the floatables control program is to eliminate trash and debris from the receiving water. We recommend modifying the last sentence in this section (on page 25) to say: "The [P]ermittee must continue to implement existing or improved controls to reduce floatables and settleable solids from the MS4 areas to waterbodies with the goal of achieving elimination of trash, debris, and floatables in the receiving waters." [EPA on Initial Draft Permit]

***Response IV.I-6: The permit (Part IV.I.3) was been clarified as suggested.***

Comment IV.I-7: Land-based sources cause 80% of the marine debris found on our beaches and waters. Reducing marine debris means reducing the amount of waste generated on land and disposing of it properly. EPA urges [DEC] to address this issue in the permit. [EPA on Initial Draft Permit]

***Response IV.I-7: DEC agrees that reducing the amount of waste generated on land and proper disposal is instrumental in controlling the marine debris problem. The final permit includes a requirement to conduct a media campaign targeted at reducing the amount of waste generated on land, encouraging proper disposal and gaining public support in their efforts to control this critical issue.***

Comment IV.I-8: Below is language of an explicit prohibition, as excerpted from the San Francisco Municipal Regional Stormwater Permit: [EPA on Initial Draft Permit]

“It shall be prohibited to discharge rubbish, refuse, bark, sawdust, or other solid wastes into surface waters or at any place where they would contact or where they would be eventually transported to surface waters, including flood plain areas.”

***Response IV.I-8: A prohibition within the permit is unnecessary as ECL §17-0501 contains a general prohibition stating that it shall be unlawful for any person, directly or indirectly, to throw, drain, run or otherwise discharge into such waters organic or inorganic matter that shall cause or contribute to a condition in contravention of the standards adopted by the department pursuant to section 17-0301. The final permit has been revised to address floatable and settleable trash and debris.***

Comment IV.I-9: This prohibition should also be accompanied with implementation requirements. The San Francisco permit example includes this subsequent permit requirement, which lays out specific, numeric targets for reducing and ultimately eliminating trash. [EPA on Initial Draft Permit]

“The Permittees shall demonstrate compliance with Discharge Prohibition A.2 and trash-related Receiving Water Limitations through the timely implementation of control measures and other actions to reduce trash loads from municipal separate storm sewer systems (MS4s) by 40% by 2014, 70% by 2017, and 100% by 2022 as further specified...”

Implementation requirements could include short-term and long-term trash-loading reduction plans, trash “hot spot” selection and cleanup, and reporting requirements. The baseline assessment program already outlined in the draft NYC MS4 permit would form the basis of this program, and the additional requirements would build upon that information. [EPA on Initial Draft Permit]



***Response IV.I-9: The baseline assessment program outlined in the NYC MS4 permit will form the basis of the suggested program in subsequent permit renewals.***

Comment IV.I-10: The floatable control section [Part IV.I.3] establishes deadlines only for the “commenc[ing]” a study to “determine the loading rate of floatables from the MS4....” The Draft Permit must be revised to also set a deadline for completion of that study, and for submission of a proposed cleanup plan, based on the results of the study, to reduce loadings sufficiently to eliminate discharges of floatables and other trash, as required to meet water quality standards, by a date certain specified in the permit. For example, the Municipal Regional Stormwater NPDES Permit for the San Francisco Bay Region, issued in 2009, regulates 76 municipalities and specifically requires all permittees to implement measures to reduce trash loads from storm sewer systems by 40 percent by July 1, 2014, 70 percent by 2017, and 100 percent by 2022. DEC and the Permittee can look to several “trash TMDLs” in California as a model for estimating current loadings and developing implementation plans to eliminate discharges of floatable and other trash. [NRDC/Riverkeeper/NY-NJ Baykeeper on Initial Draft Permit]

***Response IV.I-10: The final permit includes dates for commencement and completion of the baseline loading study as suggested. The trash load reduction goals will be established once the baseline study is completed through a permit modification or renewal.***

Comment IV.I-11: The permit terms related to floatables should be expanded to apply not only to floating objects, but to all “garbage...and other refuse,” as per state water quality standards. Plastic is the solid waste of greatest concern to the health of the aquatic and marine environment, yet many types of plastic do not float. A large amount of plastic sinks to the ocean floor and remains out of sight. Recent studies have begun to illustrate how pervasive plastic pollution on the seafloor is. Plastic debris, including fishing gear, has been found in the deepest (abyssal) depths of the ocean. The “floatables” term is therefore not sufficient to control marine plastic pollution. [NRDC/Riverkeeper/NY-NJ Baykeeper on Initial Draft Permit]

***Response IV.I-11: DEC agrees that the control of marine debris must include both floatable and settleable debris. The heading and language in this section of the final permit is titled “Floatable and Settleable Trash and Debris” so that all plastic debris is addressed.***

Comment IV.I-12: The Revised Draft Permit includes a new provision that “The Permittee shall continue the catch basin inspection, cleaning, repair, and retrofitting program that [DEP] is currently implementing for its catch basins citywide including MS4 areas.” The [NYC] Council Committee on Environmental Protection has raised significant concerns in oversight hearings about the adequacy of the DEP’s current catch basin cleaning program.<sup>8</sup> DEC should fully evaluate those concerns and

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<sup>8</sup> Capital New York reported that, at a budget hearing on March 15, 2015, Environmental Protection Committee Chair Donovan Richards expressed dissatisfaction with the rate of cleanup of backed up sewers and catch basins.

strengthen the permit terms concerning catch basin maintenance and cleaning as appropriate. [NRDC/Riverkeeper/NY-NJ Baykeeper on Revised Draft Permit]

***Response IV.I-12: DEC recognizes that there may be a need for improvement of current programs. The final permit requires the City evaluate the existing programs including BMPs and structural and non-structural control measures for floatable and settleable trash and debris, and their efficacy and compare them with the best available technologies identified for floatable and settleable trash and debris and propose a methodology for selecting and siting improved controls. During the interim period, the final permit requires the City continue implementing current programs.***

Comment IV.I-13: The permit should also include a requirement for NYC to capture floatables from MS4 outfalls that, based on the floatables study, cause/contribute to water quality impairments. [EPA on Revised Draft Permit]

***Response IV.I-13: Capture of floatables from the MS4 outfalls would be considered as part of the selection, sizing and siting of BMPs required by Part IV.I.3.***

Comment IV.I-14: The “catch basin cleaning program” should specifically require the same method of handling catch basins as the individual SPDES permits does for CSOs and include retrofitting where needed every 3 years. This includes specifically requiring the proper operation and maintenance, inspection and cleaning of storm sewers regularly. [EPA on Revised Draft Permit]

***Response IV.I-14: The final permit (Part IV. I – Control of Floatable and Settleable Trash & Debris) clarifies the catch basin cleaning program requirements as suggested.***

Comment IV.I-15: Some commenters suggested that the timeframe for conducting and completing the work plan to determine the loading rate of floatable and settleable trash and debris from the MS4 should be adjusted. Contrary to these commenters’ suggestion, development of the work plan will require a two-year timeframe as it has to be scientifically sound as well as practical. The methodology not only has to describe data collection, frequency, temporal and spatial extent, and appropriate equipment for data collection but must also include the type of statistical and spatial data analysis to be utilized, along with specific recommendations. In addition, to obtain the required data, DEP must hire a consultant with appropriate expertise and resources; as noted in the Fact Sheet accompanying the Revised Draft Permit, there must be sufficient time to procure these services under the City’s legally mandated procurement process.

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"According to the [federal Environmental Protection Agency] we are one of the worst cities when it comes to cleaning out our catch basins and our sewers," Richards told [DEP Commissioner] Lloyd."  
<http://www.capitalnewyork.com/article/city-hall/2015/03/8564075/dep-chief-faces-funding-questions-budgethearing>.

Moreover, a two year period is an ambitious goal for a work plan which also includes: conducting a literature search of methods employed by other municipalities; assessing the applicability of other municipalities' methods to [NYC]; assessing the conditions under which floatables materials reach the waterbodies in NYC; and explaining why the selected methodology is best for conditions in [NYC]. The Revised Draft Permit has been updated to include a deadline to complete the study, which is not to exceed three years from study commencement, addressing the concern raised by some commenters that the previous permit provision was too open-ended. In addition, the Revised Draft Permit now requires the City to implement an interim media campaign to educate the public on trash and debris control, in addition to the requirement to continue implementing existing or improved floatable and trash control programs as set forth in the prior version of the permit. These provisions, along with the requirement to conduct a loading rate study and to assess and implement reduction strategies, will ensure that the City's existing measures continue while allowing appropriate time to develop robust baseline data and recommendations to improve floatables and refuse controls under the auspices of the MS4 program. [NYC Law on Revised Draft Permit]

***Response IV.I-15: Comment noted.***

## **PART IV.J – MONITORING & ASSESSMENT OF CONTROLS**

Comment IV.J-1: The permit focuses on activities or [BMPs] without framing how they relate to water quality improvement. While the permit requires the SWMP plan to include measurable goals for each of the [BMPs] (page 12), there are no explicit requirements that these goals be framed in terms of water quality improvements. Without guidance on how the goals relate to water quality, the City can satisfy the requirements of the permit with actions which may or may not lead to reduction in pollutant loads. For example, the Annual Report requirements under Construction Site Stormwater Runoff Control (page 28) lists outcomes of activities, such as the number of SWPPPs reviewed; number and types of enforcement actions; percent of active construction sites inspected once, etc. While these activities are necessary and reporting on them useful, how they impact water quality is unclear. [NYC SWCD on Initial Draft Permit]

***Response IV.J-1: Part IV.J requires the monitoring and assessment of controls including evaluation of long-term trends in receiving water quality.***

Comment IV.J-2: The monitoring and assessment program (Part IV.J.2) that NYC is required to develop within three years of EDP has no requirements for submittal and review by [DEC]. Please include a submittal date. This could possibly be done in conjunction with the [CSO LTCPs] that are being developed for NYC's waterbodies.

This could allow work to be completed more quickly and comprehensively and would include CSO outfalls. [EPA on Initial Draft Permit]

***Response IV.J-2: The monitoring and assessment program is part of the SWMP Plan that must be submitted to DEC for approval within 3 years of the effective date of the permit.***

Comment IV.J-3: The provision in Part IV.J.2.a.iii requires monitoring to “characterize and assess the quality of stormwater discharges at representative MS4 outfalls.” DEC should add more specific language to comply with applicable EPA regulations, which require a large MS4 permittee to “describe the location of outfalls or field screening points to be sampled (or the location of in-stream stations), why the location is representative, the frequency of sampling, parameters to be sampled, and a description of sampling equipment.” [NRDC/Riverkeeper/NY-NJ Baykeeper on Initial Draft Permit]

***Response IV.J-3: The final permit includes the suggested language.***

Comment IV.J-4: The language contained in Section IV.J.3 must be revised to state the purpose of the monitoring, assessment and reporting on progress towards goals, must be not only to achieve compliance with the MEP standard but also water quality standards compliance. [NRDC/Riverkeeper/NY-NJ Baykeeper on Revised Draft Permit]

***Response IV.J-4: The final permit requires the Permittee evaluate progress in long term trends in receiving water quality as part of the assessment of the overall program. Attainment of water quality standards is an incremental process consistent with Section 402(p)(3)(b) of the CWA so long as permittees reduce the discharge of pollutants to the MEP. Water quality standards attainment in waters to which NYC MS4s discharge will require an iterative approach, and operate in conjunction with other efforts such as CSO LTCPs.***

## **PART IV.L – RECORD KEEPING**

Comment IV.L-1: Section IV.L should require the [C]ity to retain records for more than 5 years after they are generated. Five years represents only a single permit term; retention of records for such a short duration will not allow for detailed review of performance over successive permit terms, in order to identify improvements necessary for future iterations of the permit. Moreover, given DEC’s Environmental Benefits Permit Strategy, it is likely that this permit will be extended beyond its expiration date, potentially for many years, before the next permit renewal. A five year recordkeeping requirement would not even ensure that records from the entire period covered by this permit are retained until a renewal permit takes effect. [NRDC/Riverkeeper/NY-NJ Baykeeper on Initial Draft Permit]

***Response IV.L-1: The final permit reflects the record retention requirements contained in 6NYCRR 750-2.5(c)(1). This period may be extended by written request of the Department if it is deemed necessary.***

## **PART IV.M – ANNUAL REPORTING**

Comment IV.M-1: If training requirements for [IDDE] and post-construction are added, reporting for these two activities should be included in the annual reporting. This section should include requirements to report a list/summary of enforcement actions taken under the MS4 permit as well as penalties issued. Also, a database for illicit discharges identified that are not part of the NYC MS4 should be included in the annual reporting. [EPA on Initial Draft Permit]

***Response IV.M-1: The final permit includes reporting of training requirements for IDDE and post-construction stormwater inspections. The annual reporting requirements also requires the Permittee report the number of enforcement actions and penalties issued for IDDE, construction stormwater, post-construction stormwater, and industrial and commercial sources. The Permittee also provides a report on illicit discharges that are identified to be not discharging from the NYC MS4.***

Comment IV.M-2: If [DEC] adds requirements elsewhere in the permit for marking/stenciling stormwater drains which are regulated under the MS4 permit, then reporting activities should be included in this section. [EPA on Initial Draft Permit & Revised Draft Permit]

***Response IV.M-2: While DEC does not want to prescribe that all storm drains be stenciled, we do agree that it is a valuable activity that must be considered in the development and implementation of the NYC MS4 program. This activity would be reported as IDDE education activities planned or completed for the general public under Part IV.M.4.a.***

Comment IV.M-3: The provision in Part IV.M.4.a.ii refers to “education and outreach activities required by this permit (listed below),” but it is not apparent what list this refers to; (2) this provision says that the Permittee “may report on” activities pursuant to Section IV.A., but since those activities are mandatory, reporting should be mandatory as well; and “may provide” certain information related to its program, but if the actions are mandatory under the permit then the reporting should be mandatory as well; (3) the last line of this provision refers to “the following information applicable to their [sic] program:”, but there is no text following the colon to indicate what this information is. [NRDC/Riverkeeper/NY-NJ Baykeeper on Initial Draft Permit & Revised Draft Permit]

***Response IV.M-3: The final permit clarifies these reporting requirements.***

Comment IV.M-4: Part IV.M.a.iv & v should be reported under IDDE (M.d) and construction (M.e) respectively. [EPA on Initial Draft Permit]

***Response IV.M-4: The reporting of construction site stormwater training and municipal employee pollution prevention and good housekeeping training has been removed from the Public Education and Outreach reporting section. Reporting on these training activities will be included with the IDDE and construction activities as suggested.***

Comment IV.M-5: The provision in Part VI.M.4.b.ii requires the annual report to explain “as appropriate, how the MS4 will respond to comments [on the annual report] and modify the program in response to comments.” This should be revised to make clear that the [P]ermittee must provide response to comments as part of the final annual report, and that the phrase “as appropriate” applies only to “modify[ing] the program.” [NRDC/Riverkeeper/NY-NJ Baykeeper on Initial Draft Permit]

***Response IV.M-5: The final permit requires a summary of the public comments received on the annual report, how the MS4 will respond to comments, and, as appropriate, modify the program in response to the comments.***

Comment IV.M-6: [DEC] should add reporting enforcement actions related to illicit discharges (number and type) to Part IV.M.4.d. [EPA on Initial Draft Permit]

***Response IV.M-6: Reporting on the number and type of enforcement actions and penalties related to illicit discharges is included in Part IV.M.4.d.ii of the final permit.***

Comment IV.M-7: The Permittee should also require a list of construction site enforcement actions taken by NYC with the name, contact info, [DEC] permit numbers (if permitted) for non-compliant construction sites for potential follow up by other agencies. [EPA on Initial Draft Permit & Revised Draft Permit]

***Response IV.M-7: The permit requires that the City implement and enforce the construction site program for projects located within their MS4 sewer sheds. It is expected that the City track their inspections, outcome and enforcement actions and progress in returning non-compliant construction sites to compliance and these records must be made available to DEC or EPA upon request. DEC does not feel it is appropriate to include these records as part of the annual reporting.***

Comment IV.M-8: Part IV.M.4.f.iii should require reporting not only of the “number of post- construction management practices,” but also the amount of impervious area managed by such practices and the types of practices utilized (including the number of each type, and the total acreage managed by each type). Such data on impervious area

managed, and types of practices used, is essential to understanding the degree of pollution reduction being achieved, cumulatively, by post-construction stormwater management practices. We note that the City's CSO Consent Order with DEC relies on tracking of impervious area managed as a key metric for calculating pollutant load reduction; that approach should be replicated here, and the two programs should be more clearly integrated. [NRDC/Riverkeeper/NY-NJ Baykeeper on Initial Draft Permit]

***Response IV.M-8: The final permit requires reporting on the number of post-construction stormwater management practices, including the type of practice and the contributing impervious area managed by each practice as suggested.***

Comment IV.M-9: Section IV.M.4.f.iii. must be revised to change "1 acre" to "5,000 s.f." for reporting purposes, and must not be limited to sites reflected in DEC permit data since sites smaller than 1 acre will not have obtained coverage under DEC's [CGP]. [NRDEC/Riverkeeper/NY-NJ Baykeeper on Revised Draft Permit]

***Response IV.M-9: Once an appropriate construction site threshold has been determined, it will be incorporated into the permit as part of a permit modification or renewal. The permit modification or renewal will include the appropriate reporting requirements. The final permit removes the reference to DEC permit data as suggested.***

Comment IV.M-10: The permit should also require NYC to report the miles of storm sewers inspected and miles of storm sewers cleaned. [EPA on Initial Draft Permit]

***Response IV.M-10: Part IV.M.4.g.v of the final permit requires reporting on the miles of storm sewers inspected and cleaned as suggested.***

Comment IV.M-11: [Part IV.M.4.g.vi requires reporting on the number of self-assessments conducted at municipal operations & facilities]. Does [DEP] have the authority to inspect/audit municipal operations for other NYC departments? If so, please provide the authority (regulatory/statutory) with which DEP will carry out inspections/audits for other NYC Departments. [EPA on Initial Draft Permit & Revised Draft Permit]

***Response IV.M-11: The permit is issued to NYC and does not prescribe who will conduct the inspections or audits. It is the responsibility of the City to ensure that the self-assessments are conducted as required by the permit. It is expected that the written procedures required for the self-assessments will specify the authorized representatives assigned this task will have adequate authority to conduct the audits and ensure the recommendations are implemented.***

Comment IV.M-12: [Reporting in Part IV.M.4.h] should include the name, address, contact information, for noncompliant MSGP facilities for potential follow up by [DEC] and this information should be made available to EPA. [EPA on Initial Draft Permit & Revised Draft Permit]

***Response IV.M-12: DEC agrees that records regarding the name, address, contact information for noncompliant MSGP facilities must be maintained by the City along with the records documenting progress in resolving the non-compliance, and these records must be made available upon request. However, we do not agree that these records should be submitted as part of the annual reporting.***

Comment IV.M-13: The language [in Section IV.M.j.i] must be revised to [require] reporting progress towards goals to achieve compliance with the MEP standard and also water quality standards compliance. Further the last sentence of Section IV.M.4.j.i should be revised to require, unconditionally (i.e. not to the [MEP]) that the [P]ermittee "identify and use measureable goals, assessment indicators, and assessment methods" to determine progress towards achieving compliance with water quality standards. [NRDC/Riverkeeper/NY-NJ Baykeeper on Revised Draft Permit].

***Response IV.M-13: Part IV.M.4.j.ii requires reporting of results of information collected and analyzed as part of the Monitoring and Assessment Program which includes evaluation of long-term trends in receiving water quality.***

## **PART IV.O – PROGRAM DEVELOPMENT COMPLIANCE SCHEDULE**

Comment IV.O-1: Page 31-IV.O: This section should include a schedule of measurable goals for eliminating illicit discharges once they are, identified. [NRDC/Riverkeeper/NY/NJ Baykeeper on Revised Draft Permit] [EPA on Initial Draft Permit & Revised Draft Permit]

***Response IV.O-1: The permit language in Part IV.D.4 includes abatement procedures for dry weather discharges (currently specified in Parts 2a & 2b of the Untreated Discharges Section in the individual Permits for the DEP Wastewater Treatment Plants). Part IV.O – Table 2 includes deliverables for reporting progress on trackdown and elimination of illicit discharges.***

Comment IV.O-2: Table [2], which lists the deliverables in the NYC MS4 Permit schedule should be changed ... to address a number of timing requirements within the permit, for example, those required in Part IV.D.2, Part IV.D.5 and Part IV.F.1.e, and



others, that are not listed in Table [2]. Those should be included so that Table 2 is complete. [NRDC/Riverkeeper/NY-NJ Baykeeper on Revised Draft Permit]

***Response IV.O-2: Table 2 of the final permit includes the deliverables for requirements contained in Part IV.D.2, Part IV.D.5 and Part IV.F.1.e as suggested.***

Comment IV.O-3: Under III.B Legal Authority, “Development of law, ordinance or regulatory mechanism to require basic erosion and sediment controls and good housekeeping as a standard practice for all construction projects (Part III.B.1.e)” should be changed, there appears to be no Part III.B.1.e - Part III.B.1 only goes up to b. [NRDC/Riverkeeper/NY-NJ Baykeeper on Revised Draft Permit]

***Response IV.O-3: Table 2 of the final permit has been corrected to reference Part III.B.2.e***

Comment IV.O-4: Under IV.B [SWMP] Plan, “Progress reports on the development of the SWMP Plan, including public involvement/ participation components (Parts IV. Introduction and IV.B.2.d)” should be changed. Neither section refers to requirements 1 year after EDP; IV.B.2.d does not refer to progress reports. Perhaps the entry should refer to IV.B.2.e, but 2.e does not contain a time requirement. [NRDC/Riverkeeper/NY-NJ Baykeeper on Revised Draft Permit]

***Response IV.O-4: Table 2 of the final permit has been corrected to remove the reference to Part IV.B.2.d.***

Comment IV.O-5: Under IV.B [SWMP] Plan, “Submission of the complete draft SWMP Plan, including all components identified in Parts II.B, III.A through D, and IV. Intro and IV.A through J (Table of SWMP components in Appendix 3)” the referenced 3 year timeline does not appear in the referenced portion of Appendix 3, nor does it appear in IV.B. Perhaps it refers to the 3 year time line in IV.F.4. [NRDC/Riverkeeper/NY-NJ Baykeeper on Revised Draft Permit]

***Response IV.O-5: Table 2 of the final permit has been clarified further to address this comment.***

Comment IV.O-6: Add the 3 year EDP preliminary map requirement located at IV.C.2 to the appropriate section in Table 2. [NRDC/Riverkeeper/NY-NJ Baykeeper on Revised Draft Permit]

***Response IV.O-6: A deliverable for the preliminary map is included in Table 2.***

Comment IV.O-7: You include a timeline under Part IV.D.2 under the heading for Part C in Table [2]; it should have its own section in Table [2]. You should clarify that Table [2]'s reference to an upgraded MS4 outfall inventory and MS4 drainage map every year after EDP refers to the permit requirement that "The Permittee shall submit an updated outfall list every year as a spreadsheet that includes all MS4 outfalls." if this is what it refers to. The difference in language is confusing. [NRDC/Riverkeeper/NY-NJ Baykeeper on Revised Draft Permit]

***Response IV.O-7: The suggested changes are reflected in the final permit.***

Comment IV.O-8: Annual effectiveness assessment (included in Annual Reporting Part IV.M.4.j.i) and associated review of activities or control measures (Part IV.M.4.j.iii) is listed under IV.J in Table [2], rather than its own heading for IV.M; it is unclear where the "4 years after EDP" part of the time line comes from. [NRDC/Riverkeeper/NY-NJ Baykeeper on Revised Draft Permit]

***Response IV.O-8: The suggested changes are reflected in the final permit.***

Comment IV.O-9: Table [2] in Part IV.O [of the Revised Draft Permit] includes a reference to "Part III.B.1.e" and indicates it requires development of a law, ordinance or regulatory mechanism to require basic erosion and sediment controls and good housekeeping for all construction projects. This item in Table [2] appears to be an error. First, there is no Part III.B.1.e in the Revised Draft Permit. There is a Part III.B.2.e, but this provision requires that the City demonstrate adequate legal authority to require measures to control water runoff, construction materials and debris, and erosion during construction or demolition activities in discharges to the MS4. The final version of the permit should update both the reference and the language in Table 2 to match the substantive requirements of Part III.B.2.e. [NYC Law on Revised Draft Permit] [NRDC/Riverkeeper/NY-NJ Baykeeper on Revised Draft Permit]

***Response IV.O-9: The suggested changes are reflected in the final permit.***

## **PART V – STANDARD PERMIT CONDITIONS**

Comment V-1: Standard Permit Conditions: Please add the standard permit conditions regarding continuation of expired SPDES permits and retention of records (found in the [DEC] MS4 General Permit) to the [NYC] MS4 permit. [EPA on Initial Draft Permit & Revised Draft Permit]

***Response V-1: The provisions for continuation of the final permit can be found on Page 1, "this permit and the authorization to discharge shall expire on midnight of the expiration date shown above and the Permittee shall not discharge after the expiration date unless this permit has been***

***renewed, or extended pursuant to law. To be authorized to discharge beyond the expiration date, the Permittee shall apply for permit renewal not less than 180 days prior to the expiration date shown above.” Under the State Administrative Procedures Act, Chapter 82 of NYS Consolidated Laws, provided that the Permittee files a timely and sufficient application for renewal at least 180 days prior to expiration of the permit, an administratively extended SPDES permit continues in force and effect until the Department issues a new permit. The standard permit condition for retention of records is included in Part V.P.***